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Newfoundland - Statutes

THE CONSOLIDATED STATUTES

OF
NEWFOUNDLAND
[THIRD SERIES.]

BEING A CONSOLIDATION OF THE STATUTE LAW
OF THE COLONY DOWN TO AND INCLUDING
THE SESSION OF THE LEGISLATURE IN
THE YEAR 1916,

PRINTED AND PUBLISHED BY AND UNDER THE AUTHORITY
OF THE GOVERNOR IN COUNCIL, AND PROCLAIMED
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1. The following terms and expressions herein shall be held to have the meaning assigned to them in this section, namely:

“Surveyor” means a surveyor authorized by the Minister of Agriculture and Mines to survey Crown lands, and “Crown Lands” means all lands within the Colony, the title to which is in the Crown.

“Minerals” shall be construed to include petroleum and other mineral oils, and a mineral license, lease or grant shall confer the same rights with respect to such oils as to other minerals.

“Timber” means trees standing or cut, or cut into lengths but not sawn into board or otherwise manufactured, and shall include bark.

“Board measure” for trees cut down shall be calculated according to the Schedule hereto.

2. Copies of any records, plans, books or papers belonging to or deposited in the Department of Agriculture and Mines, attested under the signature of the Minister of Agriculture and Mines, shall be competent evidence in all cases in which the original records, plans, books or papers would be evidence.

3. No person employed in the Department of Agriculture and Mines or holding an office created by or continued under this Chapter, shall acquire or hold, either alone or with another, any grant, lease or license, under this Chapter.

ORDINARY PURCHASE AND SALE OF LANDS.

4. Crown lands shall, except as hereinafter provided, be open for purchase in lots, at an upset price to be fixed by the Governor in Council, according to the location and value of such lands, the upset price in no case to be less than thirty cents per acre. Every grant of more than twenty acres shall be upon the condition that the grantee shall, within five years from the date of the grant, *bona fide* clear and cultivate ten acres for every one hundred acres comprised in the grant, and in the same proportion for any less quantity: Provided that, except in special cases where otherwise ordered by the Governor in Council, no grant of more than six hundred and forty acres shall be made to one person; and provided also, that such lands as from time to time may be deemed advisable by the Governor in Council, may be withdrawn from ordinary sale and settle-

ment and sold by public auction to the highest bidder, an upset price being fixed upon said lands. No grants shall be issued until the land applied for shall have been surveyed by a surveyor at the cost of the applicant and reported upon by the surveyor in favor of the applicant.

5. The Governor in Council may issue licenses of occupation of Crown lands on payment of a fee of five dollars for each one hundred and sixty acres, for not less than one hundred and sixty acres, nor more than six thousand four hundred acres, subject to the condition that the licensee shall, within two years settle upon the land one family for each one hundred and sixty acres, and for a period of five years cause to be cleared at least two acres per year for every hundred acres so licensed, and continue the same under cultivation and continue the same families thereon, or others in lieu thereof, for a period of ten years from the expiration of the said five years; upon the performance of which condition the said licensee shall be entitled to a grant in fee of the said land.

6. The Governor in Council shall have power to issue licenses of occupation of areas of Crown lands of five thousand acres, which licenses shall entitle the holder to grants in fee, upon the performance of such terms and conditions as the Governor in Council shall deem fit to provide, to secure the settlement upon and cultivation of the land. In all such licenses of occupation and grants such reservation shall be made as may be necessary for the preservation of the seashore for the fishery and all other public purposes. Such terms and conditions shall, in all cases, comprise the following, namely; that the holder of the license shall, within two years from the date of license, clear and have ready for crop at least one per cent. of the area comprised in the license; within three years, two per cent.; within four years, four per cent.; within five years, seven per cent.; within six years, ten per cent.; within seven years, thirteen per cent.; within eight years, sixteen per cent.; within nine years, twenty per cent.; and within ten years, twenty-five per cent.; and shall settle upon the land at least one family for every three hundred and twenty acres.

7. The Governor in Council may issue licenses of occupation, in quantities not exceeding fifty acres, of any Crown lands, for a term not exceeding five years, to such persons as shall be desirous of permanently settling on and cultivating the same. To such persons as shall have *bona fide* actually and continuously occupied and resided on the land so licensed for a period of five years from the date of the license, and shall have cultivated within that period two acres of the said land, the Governor in Council may issue grants in fee for the quantity of land specified in the license.

8. In addition to the conditions provided by Sections 5, 6 and 7 all licenses of occupation issued under any of these sections shall contain a condition that it shall be unlawful for the licensee at any time before he has received a fee-simple grant of the land comprised in such license, to cut, take or carry away from said land any trees or timber except in the course of clearing said land for *bona fide* cultivation or for his actual use for building or fencing upon or in connection with the said land or for firewood. Any person violating this condition shall be liable to a penalty of twenty dollars for every tree or one thousand feet of lumber so cut, taken or carried away, in addition to the value of the tree or lumber, to be recovered in a suit in the name of the Minister of Agriculture and Mines, in addition to the forfeiture of his license.

9. All agricultural lands, for which application shall hereafter be made, shall be surveyed by a surveyor approved by the Minister of Agriculture and Mines, and a diagram thereof filed in the Department of Agriculture and Mines within six months from the date of notice from the Minister of Agriculture and Mines to the applicant, that such survey is required, and all fees and amounts payable to the Crown on account of such lands shall be paid within six months from the date on which the Minister of Agriculture and Mines sends notice to the applicant that his application has been approved by the Governor in Council. No priority shall exist with reference to application for lands which are not surveyed and upon which the fees aforesaid have not been paid within the time hereby limited.

10. The Governor in Council shall have power from time to time to set apart and withdraw from purchase any tract or tracts of land which it may be considered by him expedient to lay out for towns or villages, or other like public purposes, and to cause the same to be surveyed and laid out, and the lots so laid out to be sold at public auction after one month's notice in the *Royal Gazette* and one other newspaper under the hand of the Minister of Agriculture and Mines.

11. The Governor in Council may also set apart and appropriate such Crown lands as may be deemed expedient for the sites of market places, public buildings, gaols, court houses, places of public worship, cemeteries, schools, benevolent institutions, squares, parks and other like public purposes, and also any bog lands, beaches or shores for general and public use, and, at any time before the issue of grants or leases therefor, may alter or revoke such appropriations as he deems expedient, and may make free grants for the purposes aforesaid of the lands so ap-

propriated, the trusts and uses to which they are to be subjected being expressed in the leases or grants.

12. It shall be a condition of any grant, lease or license under this Chapter, that the holder thereof shall preserve at least five per cent. of all trees or wooded lands as shelter for stock; and in cases where there are no trees, the grantee, lessee or licensee, shall plant and cultivate, or cause to be planted or cultivated, twenty trees every year for ten years for every acre contained in his grant lease, or license.

13. The Governor in Council shall have power to set apart such areas or tracts of Crown lands as may be deemed necessary, to be used as commons for pasturage, subject to such rules, regulations and conditions as may be prescribed by the Governor in Council.

14. In all grants, leases and licenses there shall be reserved for public use a width of not less than twenty-five feet and not exceeding one hundred feet round and adjoining all lakes and ponds, and on both banks of all rivers. In special cases where the land immediately adjoining any pond, lake or river is required to be used or occupied for a building or for other purposes, the Governor in Council may permit such use or occupation upon condition of such other or substituted reservation out of the grant, lease or license as may be necessary for public use.

15. All holders of grants, leases and licenses shall at all times keep up good and substantial posts, mounds or monuments at all corners and angles of the land held by them, and shall keep the boundary lines through the woods connecting the said corners and angles open and clear to a width of at least three feet.

BOG LANDS.

16. The Governor in Council may lease for a term of years, in quantities not exceeding five thousand acres, such areas of Crown lands as shall be, after the survey and report hereinafter provided, declared to be bog lands under this Chapter.

17. Applications for leases of bog land shall be by petition to the Governor in Council. Such petition shall be signed by the applicant and verified by affidavit, and shall contain a description with boundaries and extent of the lands applied for.

18. Notice of intention to apply for a lease of such lands shall be published in the *Royal Gazette* and one other newspaper published in this Colony for one month prior to the application.

19. The applicant shall file his petition in the office of the Minister of Agriculture and Mines, and therewith shall also file a survey of the land applied for, made by a surveyor, and also a report, signed by such surveyor, containing a statement of the nature of the land surveyed, whether barren, bog or wooded, and of the quantity and kind of timber growing thereon, and such other facts as may be considered necessary. No petition shall be considered unless accompanied by such survey and report.

20. After the consideration of such petition, survey and report, and upon the recommendation of the Minister of Agriculture and Mines, the Governor in Council may declare the lands to be bog lands, and may grant to the applicant, as hereinbefore provided, a lease of the same for such term, at such rent and subject to such conditions as he shall determine.

21. It shall be lawful for the Governor in Council to make regulations as to the manner in which bog lands, leased under the provisions of this Chapter, shall be worked, so as to provide that bog shall not be removed therefrom beyond a depth to be specified in such regulations, and the lessee of bog lands to which such regulations shall apply shall be under obligation to observe the same as if the said regulations were conditions set forth in his lease.

QUARRIES.

22. The Governor in Council may grant leases of land for quarrying purposes. Such leases shall be for a term of not more than ninety-nine years, and shall comprise an area of not more than eighty acres, and shall be at a rental of not less than twenty-five cents per acre per year.

- (1) Applicants for such leases shall give notice of their intention to apply for same in the *Royal Gazette* for one month prior to such application.
- (2) The lessee shall commence the work of quarrying within two years from the date of the lease, and shall continue the effective operation of the said work during the term of the said lease.
- (3) Every holder of a lease for quarrying purposes who satisfies the Governor in Council that he has within five years from the date of his lease *bona fide* expended in quarrying on the land in his lease comprised the sum of six thousand dollars, shall be entitled to a grant of said land in fee simple.

- (4) Every such lease shall be upon the condition that if the lessee shall, for the space of five years, intermit the operation of work thereunder, the said lease shall be void, and the land therein comprised shall revert to the Crown.

WATER POWERS.

23. The Governor in Council, after the applicant has given one month's notice in the *Royal Gazette* and one other newspaper of his intention to apply for same, may lease for a term of years the right to use the waters of any pond or river for the purpose of driving machinery, subject to such rent and conditions as may be deemed expedient: Provided that the vested rights, if any, of all persons holding lands whose interests may be affected by the use of the water of any such pond or river, shall be reserved in such lease; and also provided, that in no case shall the water in such pond or river be reduced by the said lessee below average summer level, nor shall any noxious or deleterious substance, or any sawdust or refuse of saw mills be introduced into such ponds or rivers, whereby fish may be injured or the waters discolored, or rendered unfit for drinking or other purposes. Any person violating the provisions of this section shall be liable to a fine of one hundred dollars for every offence, to be recovered in a summary manner before any Stipendiary Magistrate.

BREEDING OF FISH.

24. The Governor in Council may, for the purpose of encouraging the breeding of fish in this Colony, lease to any applicant, for a term of years, after the applicant has given one month's notice in the *Royal Gazette* and one other newspaper of his intention to apply for the same, the right to use any pond or river, and such quantity of land adjoining the same as may be necessary for such purposes, subject to such terms and conditions as may be deemed necessary.

TIMBER AND TIMBER LANDS.

25. The right of cutting timber shall be at a bonus per square mile, to be fixed by the Governor in Council, varying according to the situation and value of the limit, but in no case less than two dollars per square mile. The said bonus shall be paid within thirty days from the date of the approval of an application for a license by the Governor in Council, and the said bonus is to be paid on the whole area applied for.

26. The Governor in Council may grant licenses to cut timber on Crown Lands for a period of ninety-nine years.

27. No such license shall be granted until notice of intention to

apply therefor has been published in the *Royal Gazette* for a period of one month prior to such application. The said notice shall contain the name and address of the applicant and with as much certainty as possible shall describe the location and boundaries of the land applied for, (naming the Electoral District in which same is situated), and its approximate area.

28. All licenses shall be issued subject to the following conditions:

- (1) The licensee to erect a saw mill or mills or a factory or factories for the manufacture of paper or paper pulp upon or in connection with the limit described in such license and subject to any special conditions which may be agreed upon and stated in the license, such saw mill or mills to be of the capacity to cut at the rate of one thousand feet board measure in twenty-four hours for every ten square miles comprised in the license, or to establish such other manufactory of wood goods as may be agreed upon as the equivalent of such mill or mills, the licensee to commence and complete the erection of the saw mill or mills or manufactory of wood goods within such period as shall be determined by the Governor in Council and set forth in the license or to expend in the erection and equipment of a factory or factories for the manufacture of paper or paper pulp such sum as shall be prescribed and within such period as shall be limited and stated in such license, and further, to work said limit in a *bona fide* manner and operate said mills or factories during each succeeding year of the term of the license; provided that the licensee may, with the consent of the Governor in Council, manufacture a greater or less quantity of timber in any year than the quantity specified.
- (2) To take from every tree he cuts down all the timber fit for use, and manufacture the same into sawn lumber or such other saleable products as may be provided in the license or by any regulations made under this Chapter.
- (3) To prevent all unnecessary destruction of growing timber on the part of his men, and to exercise strict and constant supervision to prevent the origin and spread of fires and to preserve the growth of young timber trees.
- (4) To make returns to the Government annually on oath, on or before the 30th of November in each and every year of (a) the total quantity of timber cut between the 1st day of July

and the 30th day of June then last past which is liable to the payment of royalty, and (b) of all timber cut for the manufacture of paper or paper pulp, also to make returns annually or at such other periods as may be required by the Governor in Council, or by regulations under this Chapter, sworn to by him or by his agent or employee, cognizant of the fact, of the quantity of sawn lumber, timber, railway car stuff, ship timber and knees, shingles, laths, cordwood or bark, or any other product of timber sold or disposed of by him during such year or other period and the price or value thereof, the licensee to be liable to a fine of fifty dollars if the returns aforesaid be not filed in the Department of Agriculture and Mines within thirty days from the date on which they are required to be filed as aforesaid.

- (5) To pay in addition to the said bonus an annual ground rent of two dollars per square mile, such rent to commence and be computed from the date of the approval of the application by the Governor in Council and to be paid in advance, the first year's rental within thirty days of such approval and to be paid on the total area applied for and approved and that for subsequent years on the area surveyed and described in the license, on the thirtieth day of November; and, further, a royalty in all cases, except on lands in Labrador, at the rate of fifty cents per thousand feet, board measure, for all trees cut down; and in Labrador at the rate of twenty-five cents per thousand feet board measure for all trees cut down: Provided that no royalty is to be payable on timber or trees manufactured into paper or paper pulp.
- (6) To keep correct books of such kind and in such form as may be provided by his license, or by regulations under this Chapter, and to submit the same for the inspection of the Minister of Agriculture and Mines, or a person authorized by him, whenever required, for the purpose of verifying his returns aforesaid.
- (7) The license shall describe the land on which the timber may be cut, and shall vest in the licensee during its continuance the right to take and keep exclusive possession of the land so described, subject to the conditions herein provided or referred to; and such license shall vest in the holder thereof all right of property whatsoever in all trees and timber cut within the limit of the license during the continuance there-

of, whether such trees be cut by the authority of the holder of such license or by any other person with or without his consent; such license shall entitle the licensee to seize as his property, such timber where the same is found in the possession of any unauthorized person, and also to bring any actions or suits at law against any party unlawfully in possession of any such timber, or of any land included in such license, and to prosecute all trespassers thereon, and other such offenders as aforesaid, to conviction and punishment, and to recover damages, if any, and all proceedings pending at the expiration of any such license may be continued and completed as if the license had not expired; provided that such license shall be subject to the right of the Governor in Council to grant any of the said land, exclusive of the trees or timber thereon, and to grant any of the said land absolutely, after the timber has been cut therefrom, for the purpose of agriculture or for mining, and to deal with the same fully and effectively for such purposes; and provided also, that nothing in the said license shall be construed to prevent or debar any person in this Colony from cutting or using any trees or timber on such lands for the *bona fide* purposes of the fisheries, for building vessels, for masts, for poles for erecting flakes, for fencing and for firewood, and for such like purposes; provided further that any person or persons may, at all times make and use roads upon and travel over the ground so licensed; and that the said license shall not be so construed as to prevent any person or persons from taking from the ground covered by the said license, standing timber of any kind (without compensation therefor) to be used for the making of roads, bridges, or public works, by or on behalf of the Government of Newfoundland, the authority of the Minister of Agriculture and Mines having been first obtained; and that persons settling under lawful authority or title on the land so licensed, shall not in any way be molested or interrupted in clearing and cultivation by the licensee or any person for or on his behalf.

- (8) The licensee shall be liable to forfeiture for the non-payment of rent or royalties; and for the infraction of any of the other conditions to which the said license is subject, the licensee and his assigns shall be liable to a penalty of not more than

ten thousand dollars, and a penalty of not more than one hundred dollars for every day any such infraction continues. The said penalty may be recovered by suit in the name of the Minister of Agriculture and Mines, and shall be a first charge on any and all property that may be upon the land licensed.

29. The Governor in Council may, after the notice provided in section 27 of this Chapter, grant to the proprietors of the mill of the capacity required by sub-section (1) of section 28 of this Chapter, a license to cut timber upon another limit for the period in the said section provided, without the condition on the part of the licensee to erect a mill or mills in connection with his limit, but subject to all other conditions as herein provided.

30. The Governor in Council may grant to any person being the holder of a license to cut timber under the provisions of Section 28 of this Chapter, in addition and without prejudice to any rights enjoyed under such license, a right to cut timber upon the limits comprised in such license for the purpose of the manufacture of pulp, without the payment of or being liable for any payment in respect of any royalty for any trees cut down for such purpose: and also, upon being satisfied that the holder of such license has expended the sum of twenty thousand dollars in and upon the erection of a factory for the manufacture of pulp, may relieve the holder of such license of the obligation of erecting and continuing the working of the mill provided in sub-section (1) of Section 28. Provided that every such holder of a license shall quarterly make returns to the Governor in Council, showing the quantity of lumber so manufactured into pulp and the quantity sold, and the value thereof. And any person holding a license under the provisions of the said section may surrender same and obtain a new license in lieu thereof, including the rights provided for in this section.

31. Any ground rent, royalty, or other dues to the Crown on timber cut within any limit, which are not paid at the time when they become due and payable, shall bear interest at the rate of six per cent. per annum, until paid, and shall be a lien upon any timber cut within such limits; and whenever the ground rent on any limit or any royalty or other dues to the Crown on any timber are unpaid the Minister of Agriculture and Mines may seize so much of the timber cut on such limit and in possession of the licensee or on his premises, whether sold or unsold, as will, in his opinion, be sufficient to secure the payment of such rent, royalty and other dues, and all interest and expenses of seizure and sale,

and may detain the same as security for the payment thereof; and if such payment be not made within three months of such seizure, the Minister of Agriculture and Mines may sell such timber by public auction, and after deducting the sum due to the Crown the interest thereon and expenses aforesaid, he shall pay over the balance, if any, to the lessee or owner of the timber.

32. All timber cut under license shall be liable for the payment of Crown dues thereon wheresoever the said timber or any part of it may be found, whether it be or be not manufactured into deal, boards or any other products.

33. (1) No license or grant of any Crown land shall give or convey any right or title to any slide, dam, pier or boom or other work for the purpose of facilitating the descent of timber or saw logs, previously constructed on such land, or in any stream passing through or along such land, unless it is expressly mentioned in the license or grant that such slide, dam, pier or boom or other work, is intended to be thereby granted.

(2) The free use of slides, dams, piers, booms or other works on streams to facilitate the descent of lumber and saw logs, and the right of access thereto for the purpose of using the same and keeping them in repair, shall not in any way be interrupted or obstructed by or in virtue of any license or grant of Crown land made subsequent to the construction of such work.

34. The free use, for the floating of saw logs and other timber, rafts and draws, of all streams and lakes, that may be necessary for the descent of timber, and the right of access to such streams and lakes, and the passing and repassing on and along the land on either side thereof, whenever necessary for such use thereof, and over all existing and necessary portage roads past any rapids or falls, or connecting such streams or lakes and over such roads, other than road allowances, as owing to natural obstacles may be necessary for the taking out of timber or saw logs from lands, and the right of constructing slides where necessary, shall continue uninterrupted and shall not be affected or obstructed by or in virtue of any license or grant of such lands, or by or in virtue of any license to cut timber held by one person as against any other person holding a license for the same purpose.

35. It shall be lawful for the Governor in Council upon being sat-

ified that any lands are required for the *bona fide* purposes of mill sites, dams and over-flowage purposes in the manufacture of paper or paper pulp, to issue fee simple grants of any such lands to lessees of pulp areas on such terms and conditions as may appear reasonable and just.

36. It shall be lawful for the Governor in Council to accept from the lessee of a water power as commutation of all the rents therefor the present payment of a sum equal to twenty of the annual rentals reserved in his lease.

37. Every applicant for a timber license shall at his own cost cause the limit mentioned in his application to be surveyed by a surveyor, the boundary lines of said limit to be properly marked by a blazed line connecting the angles in the boundaries thereof, which angles shall be marked by posts at least five feet high, and a diagram thereof to be filed in the office of the Minister of Agriculture and Mines within one year from the date of the approval of his application, and if such survey be not made, the boundary lines marked and the diagram filed as aforesaid within the said period of one year, all claim to the said limit under such application shall be forfeited; provided, nevertheless, that if the said applicant shall prove to the satisfaction of the Governor in Council, that for good and sufficient reason the foregoing terms and conditions of this section could not be complied with, within the time hereinbefore limited, the time for making the survey as aforesaid may be extended for a further term not exceeding two years, on payment of an extra bonus of two dollars per square mile within thirty days of the granting of such extension. Applications in writing for an extension of the time as aforesaid shall be made to the Minister of Agriculture and Mines not less than thirty days before the termination of the term of one year hereinbefore limited, and such application shall state the grounds on which such extension is sought. The Minister of Agriculture and Mines shall formulate instructions to surveyors for the purpose of more particularly defining the meaning of the words "blazed line" in this section.

38. The owner, proprietor or manager of every saw mill erected on or working near the margin of any of the public waters, bays, creeks or harbors of this Colony or its Dependencies, shall take means to prevent the introduction into the said public waters, bays, creeks or harbors as aforesaid, of any noxious or deleterious substance, or any sawdust, or any refuse of saw mills, under a penalty for every offence of one hundred dollars, to be recovered in a summary manner before any Stipendiary Magistrate.

39. In the case of applications for licenses under Sections 33, 34 or 35 of "The Crown Lands Act, 1903," which have been made and approved by the Governor in Council, such licenses may be issued under the provisions of said sections, notwithstanding any repeal of the said Act; provided, that applicants for licenses under said sections may, if they so elect, take licenses under the provisions of this Chapter, and persons holding licenses under the provisions of any Act of the Legislature for the cutting of timber or the cutting of timber for the manufacture of paper or paper pulp may exchange same for licenses under this Chapter.

40. All timber cut under the provisions of a license and upon which a royalty is payable under this Chapter, or under any Act relating to Crown Lands, shall be scaled by an authorized scaler before being manufactured. Any licensee who shall manufacture any timber upon which a royalty is payable without having the same first scaled by an authorized scaler shall be liable to a penalty not exceeding the value of the timber manufactured, to be recovered by action in the name of the Minister of Agriculture and Mines.

41. The Minister of Agriculture and Mines may authorize such persons as he deems fit to act as scalers for the purposes of this Chapter and may make such regulations as he deems necessary for the reception of reports and returns for such persons and the verification of the same. "Authorized scaler," means a person authorized by the Minister of Agriculture and Mines under the provisions of this section.

42. No person without license as aforesaid, shall cut, take or carry away from ungranted Crown lands any timber for exportation, either in logs or in lumber, under a penalty of twenty dollars for every tree or one thousand feet of lumber so cut, taken or carried away, in addition to the value of the tree or lumber, to be sued for in the name of the Minister of Agriculture and Mines, before any Stipendiary Magistrate; and in such suit it shall be incumbent upon the defendant to prove that such tree or lumber was not cut, taken or carried away in contravention of this Chapter: Provided that this section shall not prevent any person from taking away and exporting any alderwood upon payment of a royalty of thirty cents per cord of one hundred and twenty-eight cubic feet.

43. No holder of a timber or pulp license shall take or carry away for exportation from the lands licensed any trees, logs or timber, unless and until the same have been manufactured either into paper or paper pulp, sawn lumber or other saleable products of timber, under a penalty of not less than twenty dollars for every tree cut, to be recovered by suit

in the name of the Minister of Agriculture and Mines; and trees or timber cut into cordwood or other lengths shall be held not to be saleable products of timber for the purposes of this section.

44. No person being the holder of any grant, lease or license of lands for timber or pulp purposes under an Act of the Legislature, or under any contract with the Government, or as the assignee of such person, his servant or agents, contractors or sub-contractors, shall cut timber on any Crown lands other than defined in the said grant, lease or license, or shall purchase timber cut on such lands under a penalty of twenty dollars for every tree cut, to be recovered by suit, in the name of the Minister of Agriculture and Mines, in a summary manner before a Stipendiary Magistrate or Justice.

45. The Minister of Agriculture and Mines may cause the lessee or licensee, or the assigns of such lessee or licensee of any timber limit which has not been already surveyed, to have such limit surveyed by a surveyor authorized by him, and the boundary lines of the said limit marked as provided by Section 37, and in case the said lessee or licensee or the assigns of such lessee or licensee shall fail to have the said limits surveyed and the boundary lines marked as aforesaid, within three months after the receipt of notice in writing from the Minister of Agriculture and Mines requiring the survey to be made, he may instruct a surveyor to proceed with the survey, and the cost of such survey shall be paid by the said lessee or licensee or their assigns. Where two or more lessees or licensees are interested in such survey or the cutting such lines the Minister of Agriculture and Mines shall determine the proportion of the cost thereof to be paid by each. The said cost in the proportion so determined may be recovered from the licensees or lessees or their assigns by action at the suit of the Minister of Agriculture and Mines.

46. Any person now holding a license under any Act which has been repealed may exchange such license for a license under this Chapter. Any moneys paid under or for such former license shall be, in the case of such exchange, applied to the payment of rental, being computed as due from the date of the original license and the balance of such moneys being treated as payment in advance without any allowance for interest. Any such payment in advance shall be forfeited if the licensee so violates the condition of his license as to incur forfeiture thereof.

47. Whenever the rent or royalties payable under any license to cut timber shall be in arrears and unpaid for the period of six months from the day on which the same became due, the Governor in Council

may, without any suit or other proceeding to enforce the same, declare such license forfeited and thereupon the same shall be again open to application by the public.

MINERAL LANDS.

48. It shall be lawful for all persons whomsoever to search and prospect for minerals in and upon all lands in this Colony and its Dependences without first obtaining a license to search therein, and to explore the same by all such means as may be necessary to prove the existence, value and extent of minerals therein or thereunder, whether by surface or subterranean prospecting or excavation; provided that such search and prospecting shall be *bona fide* with a view to obtaining a mining location and lease thereof under the provisions of this Chapter, and that no persons so searching or prospecting shall remove and take away from any of the said lands any greater quantity of ore, mineral or metal than shall be necessary to be used as samples; and further, that this section shall not apply to any land appropriated or reserved by the Crown for any purpose.

49. No such search, prospecting, exploration or excavation shall be deemed to give any person an exclusive right to search, prospect, explore in or excavate any of the said lands unless the person so searching shall comply in all respects with the provisions of the next following section.

50. Any person discovering a vein, lode or deposit of mineral on any Crown land, being desirous of obtaining a license thereof shall proceed as follows:

- (1) Mark the said vein, lode or deposit by placing thereon a stake not less than four inches square, which stake is to be driven firmly into the ground or supported by a cairn or mound of stones and is to extend at least eighteen inches over the ground or the top of such cairn or mound. The stake shall be known as the "Discovery Stake," and shall have plainly written or printed thereon the name of the person placing the same and the date when it is so placed.
- (2) The placing of such discovery stake as aforesaid shall entitle the person making a discovery of minerals to a license, for a period of one year from the date of application for the same, of a mining location of the area and dimensions hereinafter described, provided that application be made to the Minister of Agriculture and Mines in the form to be prescribed by him, accompanied by the affidavit of the

person placing such discovery stake, within two months after the date of such staking and the sum of ten dollars be deposited therewith. The said application and affidavit shall define the position of the discovery stake by at least two bearings, or bearings and measurements to some object in the vicinity, such as marked boulders, large trees, mouth of brook, or other prominent points, and shall be accompanied by a diagram showing as nearly as possible its position on a map or chart. The said location shall be known as a "Discovery Location," and shall be described and located as following:—It shall be in form a parallelogram, the great sides of which shall be one mile long; these lines shall be parallel to a base line passing through the point marked by the discovery stake, which said base line may be on the general bearing of the vein, lode or deposit of mineral, which shall be defined by the applicant in the application for such location, or on such other bearing as may be so defined therein, and each of such sides shall be distant from the said discovery stake not more than one quarter of a mile, the shorter sides shall be at right angles to the said base line and distant from the discovery stake not more than half a mile.

- (3) The Minister of Agriculture and Mines shall cause to be made and kept in his department a register, in which shall be entered the name of every applicant for a license, the date of application, and the amount of the fee paid thereon, and every such entry shall be numbered consecutively. Every application shall, at the time of the filing thereof, be endorsed with the name of the applicant, the date of the filing, the amount of fee paid or payable thereon and a number corresponding with the number of the entry thereof in the register. Every applicant shall be entitled to receive from the Minister of Agriculture and Mines or his Deputy, a receipt for the application and the fee paid, and such receipt shall contain the number and particulars required to be entered in the register and endorsed on the application.

51. The applicant for any "Discovery Location" may, without placing any stake other than the discovery stake aforesaid, include in such application one or more adjoining locations, not exceeding ten, of not more than three hundred and twenty acres each, but the application shall

describe the discovery location, particularly, and the adjoining locations shall be described in accordance with their relative position to the said discovery location. Such adjoining locations shall be in form a parallelogram, shall be of the dimensions of one mile in length by half a mile in breadth, shall have their greatest length parallel to the greatest length of the discovery location, and at least one of the angles of each of the locations shall be either an angle of the discovery location or of another adjoining location. A sum of ten dollars shall be deposited for each additional location referred to in such application.

52. (1) On receipt of an application for a mining location under this Chapter, the Minister of Agriculture and Mines shall cause the position of the discovery location therein referred to, to be laid down on a proper map to be kept in the department for that purpose, and shall cause the surrounding country for such a distance as may be deemed expedient by him to be laid off on the said map or maps in parallelograms, each measuring one mile by half a mile, the bearings of the greater sides of which shall be parallel to the base line of the said discovery location, and the lesser side at right angles thereto. Such locations shall be numbered, and may be applied for by any person, and licenses issued therefor for one year, the same being issued without any staking being required, and the first application in writing shall have priority. Provided always that where any location cannot be laid off as a parallelogram by reason of its being bounded on one or more sides by the seashore, or by property already leased at the passing of this Chapter, the locations hereinbefore mentioned shall be laid off as near to the prescribed form as may be.

(2) Any such discovery location and adjoining locations, when laid down and laid off as aforesaid, may, at any time thereafter as often as the licenses or leases granted in respect thereof shall expire be applied for by any person, and licenses and leases may be granted therefor according to the provisions of this Chapter, without any staking being required, and the first application in writing shall have priority.

53. Applications for locations other than discovery locations made under the last preceding section shall describe the location or locations therein referred to by their respective numbers on the plan and the loca-

tion of such on the ground shall be governed absolutely by the relative position of such numbered lot on the plan to the discovery location. Provided that such location shall not interfere in any way with any location granted or leased before the passing of this Chapter.

54. (1) At any time within the aforesaid period of twelve months, if the licensee give notice to the Minister of Agriculture and Mines of his intention to hold the said land, and with his notice deposit the sum of twenty dollars as one year's rental for each location, he shall be entitled to a lease for ninety-nine years, subject to the payment of the following rental: twenty dollars for the first year; thirty dollars per year for the next five years; fifty dollars per year for a second period of five years; and one hundred dollars per year for the remainder of the term; all rents to be paid in advance.

(2) If any person apply for a lease of adjoining locations the same may be included in and under one lease for the number of locations applied for, and subject to the payment of the rental prescribed herein in respect of each location.

(3) Within one year from the date on which notice is given by the applicant for a ninety-nine year lease of a mining location or locations to the Minister of Agriculture and Mines under this section, such applicant shall, at his own expense, cause a survey of the location or locations referred to therein to be made by a surveyor approved by the Minister of Agriculture and Mines, and shall cause a diagram thereof, with the notes of the surveyor, to be filed in the Department of Agriculture and Mines within the same period. In all such surveys of mining locations the bearings of the boundaries shall be from the true meridian.

55. In case any doubt exists as to the position of any discovery stake, or of any base line as aforesaid, the Minister of Agriculture and Mines may, on the application in writing of the person placing such stake, or of any other person, send a surveyor who shall make such survey as is necessary to locate and establish the position of the said stake and base line on the ground in accordance with the description of the position hereof contained in the application for the location in which they are situate, and all costs in connection with such survey shall be paid by the person applying for said survey.

56. Application for licenses of mining locations may be made without staking:

- (1) If the location or locations referred to in such application is or are covered by the sea or public tidal waters.
- (2) If the location or locations applied for is or are situate on an island off the coast of this Island or Labrador and the area of the location or locations applied for is equal to or greater than the area of the said Island.

57. A lease of a location under the water shall not entitle the holder thereof to construct any buildings or carry on any works so as to prevent the right of access by the proprietor of adjoining land from such land to and over such water.

- 58.** (1) The lessee of a mining location, with the consent of the Governor in Council, may pay in advance the whole or any part of the rental reserved in any lease of a mining location and the amount of such payment in advance shall be the present value of the annual rentals computed at the rate of three per centum per annum interest.
- (2) The payment of the rental, as aforesaid, in advance for the entire term, shall entitle the lessee to a lease for ninety-nine years free from liability to forfeiture for any cause whatever.
- (3) Any lessee of a mining location shall be entitled to a grant in fee simple, who shall *bona fide* expend, during the first five years of his lease, the sum of six thousand dollars in surface and subterranean mining, by the excavation of not less than ten thousand cubic feet of rock or earth on a mining location of three hundred and twenty acres: Provided that if any such lessee was the holder of a mining lease under any former Act of the Legislature, under which he would have become entitled to a grant in fee simple upon the expenditure of certain money, then in estimating the amount of six thousand dollars to be expended under this section, it shall be lawful to take into account any moneys properly spent in mining as aforesaid under the provisions of the said former lease so as to entitle him to a grant in fee simple hereunder.
- (4) Any lessee of a mining location which is covered or partly cov-

ered by the sea or public tidal waters, shall be entitled to a grant thereof in fee simple who shall *bona fide* expend during the first ten years of the lease thereof the sum of six thousand dollars in submarine mining work on or in connection with the said location, and this sub-section shall apply to leases now in existence and upon which all rents are paid.

59. In cases where more persons than one shall apply for the same discovery location, or any part of the same, the person who having performed all necessary conditions shall have first made the application as hereinbefore provided shall be entitled to the absolute and exclusive right to the mining location thereby created for the period, and to all the rights and privileges mentioned in the said section, notwithstanding any other person may have previously discovered mineral in and upon and staked the same location.

60. A mining lease shall entitle the holder thereof to all the minerals in the mining location so leased during the currency of the said lease.

61. The Governor in Council may issue, together with the mining lease of the mines and minerals contained in any such mining location, a lease of fifty acres of unoccupied surface land within such mining location; and every such lease and mining location shall be subject to the condition that, if the lessee or his assigns do not pay the rental on such mining location on the day of the date of the leases in each and every year of the term, the said leases shall be and become forfeited after one month from the day when the rental becomes due and the land by such lease granted shall revert to the Crown, and all such leases shall contain such other conditions and reservations as the Governor in Council may deem just, and shall be subject to the like forfeiture if such conditions and reservations are not complied with.

62. It shall be lawful to grant subject to the provisions of this Chapter, to any applicant therefor, a license or lease of any mining location which may have become forfeited under the provisions of section 61 of this Chapter, for non-payment of rent or non-compliance with the conditions or reservations contained in the lease thereof without any notice to the holder of any such forfeiture, or without any proceedings at law or otherwise to enforce such forfeiture.

63. The Governor in Council may grant for a period of twenty

years a lease authorizing the holder thereof to dredge in any river or stream flowing through Crown lands in this Colony and whose bed belongs to the Crown, for the purpose of recovering any valuable mineral therefrom. Every such lease shall provide for the payment of an annual rental of ten dollars per lineal mile of any such river or stream and shall contain such provisions and conditions as may be required by the Governor in Council for protecting all public rights and interests in such river or stream, including the driving of logs and timber and navigation. No lease shall be granted to any person for a greater extent of river or stream than ten lineal miles.

64. The Governor in Council may upon application lease or grant to the holder of a mining lease or grant a right of way for tramways and roads, or sites for wharves and piers, and an increased quantity of surface land over and upon any Crown land or across a public road, if the wants of the lessee's mines in actual operation or anything in connection therewith require it, on such terms and conditions as may be approved by the Governor in Council.

65. (1) Whenever the holder of a mining lease or grant shall be desirous of mining or of acquiring a right of way for tramways or roads, or sites for wharves and piers, or an increased quantity of surface land, on private property for purposes connected with the working of a mine, and shall be unable to make an agreement with the owner of such property for leave to enter, and for easement and for damages to such lands, the Governor in Council may permit such mining or the pre-emption of such land and the question in difference, the compensation to be awarded, as well as the question whether or not the land is *bona fide* required for the purposes aforeaid shall be settled by arbitration.

(2) The arbitration shall be conducted as follows: The arbitrators shall be three, one person appointed by each of the contestant parties; the third arbitrator shall be the Minister of Agriculture and Mines, or some person appointed by writing under his hand, and the award of any two of the said arbitrators shall be final: Provided that either of the said parties may appeal therefrom to the Supreme Court, upon due notice to the opposite party within one month from the publication of the award.

(3) In estimating the amount of such compensation, only the actual

intrinsic value of the land with its improvements, and not the additional value thereof to the miner by reason of its being required for such mining purposes, shall be taken into consideration; but if by reason of the loss of such land, difficulty or delay be occasioned to the grantee, lessee, or licensee, in obtaining an equivalent quantity elsewhere, due weight may be given to that circumstance and to the location of the said land in relation to its surroundings in estimating the said compensation.

66. Whenever the holder of a lease or grant of a mining location which is covered by the sea or public tidal waters is desirous of acquiring, for the purpose of working same, on private land adjacent to or in the neighbourhood of such mining location, any rights for the opening of tunnels or shafts or for the erection of buildings or machinery, or for the purpose of building and maintaining wharves or piers, or for building tramways or tracks to connect such tunnels or shafts with such piers or wharves, or shall be desirous of obtaining the right of continuing said shafts and tunnels through any land or mining location, whether subterranean or submarine, and shall be unable to come to an agreement with the owner of such land or such mining location for the acquiring of such rights he may acquire the same, subject to the conditions hereinafter contained.

- (1) The holder of such lease or grant, who is in this section hereafter called the applicant, shall make application to the Governor in Council for permission to acquire such lands or other rights hereinbefore mentioned. The application shall be in writing and shall contain a description of the areas held by the applicant, and the position of the same, the number and dimensions of the shafts, tunnels and other works proposed to be made, used and maintained, the areas to be acquired for the purposes of such shafts, tunnels or other works, or for the protection thereof, the places from which such tunnels and shafts shall be driven or sunk, and the approximate course and direction thereof, and shall be accompanied by plans and profiles of the approximate location, courses and areas, and shall also state the general nature and extent of the rights, easements, privileges and powers which the applicant seeks to acquire or exercise or to have vested in him.

- (2) The Governor in Council shall have the power to require any

such further information or details as may seem desirable in reference to such application from the applicant or from the person over whose areas rights are applied for, and may grant or refuse such permission. In the events of granting the same, the Governor in Council shall fix a time for the first sitting of the arbitration to determine any matters of difference, and shall cause public notice of such permission being granted and of the time of the sitting of the arbitration to be published in the *Royal Gazette*.

- (3) The applicant shall, within thirty days after the publication of such notice, serve the persons whose lands or mineral locations are affected by such application with a copy of his application to the Governor in Council, and with notice of the deposit hereinafter mentioned.
 - (4) The applicant shall, before serving the copy of his application as aforesaid, deposit with the Minister of Agriculture and Mines such a sum, to be fixed by the Governor in Council, as will be sufficient to defray the expenses of the said arbitration.
 - (5) There shall be two arbitrators, one each to be appointed by the applicant and the person whose lands or locations are sought to be affected. In the event of the arbitrators disagreeing, they shall appoint an umpire. The decision of the said arbitrators or the said umpire shall be final, subject to appeal to the Supreme Court.
- 67.** In the award the arbitrators or the umpire shall determine—
- (1) Whether the said lands, rights, privileges easements or powers or any of them are necessary for the purposes of working the said mineral locations;
 - (2) The conditions under which the same are acquired, as to the time of commencement and completion of each of the various works comprised in the application, and as to what distances from existing mines, buildings, works, ore bodies or mineral seams and their natural and necessary extensions, such works may be constructed, and in all cases providing that such ore bodies and mineral seams may not be entered, except that the right may be granted to the applicant to sink upon land areas a vertical shaft through

the ore seams and intervening strata, until the said shaft shall reach the strata to be traversed;

- (3) The extent and nature of works to be provided and maintained by the applicant for the protection of the property and employees of the person whose lands or locations are affected;
- (4) The amount of compensation to be paid for such lands, rights, privileges, easements or powers;
- (5) The amount of a deposit to be made by the applicant as security for the payment of any judgment recovered against him by the said person, whose lands and locations are affected as aforesaid, in respect of damage sustained by reason of the carrying out of the works or of the operations authorized by said award or by reason of the failure to comply with the conditions of the award, and in the event of abandonment such damages may include any moneys paid as costs or expenses in connection with such arbitration.

Provided that nothing in this section shall in any wise affect any existing agreement or confer any right to vary or alter any such agreement.

68. So much of "The Judicature Act," as refers to arbitration shall apply to arbitrations under this Chapter.

69. The deposit referred to in sub-section 5 of Section 67, shall be made with the Minister of Agriculture and Mines, and may be made in securities approved by him, and the depositor shall be entitled to receive the interest payable thereon. Such deposit shall remain as security until the expiry of one year from the completion of all the works authorized by the said award.

70. It shall be lawful for the person whose lands or locations are affected as aforesaid at all times during the progress of such work to enter upon and inspect all the lands and works which are the subject of such award and to report to the Government Engineer as to the state and condition of the same.

71. Whenever the owner or lessee of a water power or any person or corporation engaged in lumbering, or in the manufacture of lumber or pulp, shall be desirous of acquiring any right of way or other right or easement over private property which shall be necessary for the develop-

ment of such water power or for connecting the place where such water power is being developed with any other place or places or for any other purposes connected with the development or operation of the said water power or industry and shall be unable to make an agreement with the owner of such property for leave to enter thereon or for such rights of way or other easements as shall be necessary as aforesaid and for the payment of compensation for any damage which may be occasioned to such property, it shall be lawful for the Governor in Council to permit such rights to be acquired and the question of the necessity and expediency of the acquisition of such rights and of the amount of compensation (if any) to be awarded in respect of such damage shall be determined by arbitration in accordance with and subject in all respects to the provisions of section 65 of this Chapter.

72. Any person now holding a license under the provisions of any Act of the Legislature may exchange the same for a license under this Chapter. No license granted under any other Act shall be renewed; but in lieu of such renewal the holder of a license may obtain a license, lease or leases under the provisions of this Chapter; nor shall a lease be granted under the provisions of any other Act to the holder of any such license.

73. The Minister of Agriculture and Mines, or any person appointed by the Governor in Council, shall have free access to and be at liberty at all reasonable times to inspect the works being carried on upon land given or let by any mining lease or grant under this Chapter, or any previous Act of the Legislature.

74. True books of accounts of the workings of such mines and minerals shall be kept by the lessee or his assignee, and shall be open at all reasonable time to the inspection of the Minister of Agriculture and Mines, or any person appointed by the Governor in Council.

75. The Governor in Council shall have power to lease or grant to the holder of any mineral lease or grant so much of the seashore, or foreshore, and of the public waters and land thereunder as may be or may have been required for the purpose of erecting wharves, quays, piers or other buildings, or for other purposes necessary for the operation of the mine or business connected therewith.

76. No such mineral lease or grant shall in anyway interfere with the granting of the surface land for agricultural, lumbering or other purposes, except to the extent of fifty acres as aforesaid.

77. In any case in which more than one mining lease of mineral locations contiguous to one another shall have been issued to any person, and the lessee shall have expended on any one or more of such mining locations (during the currency of his lease thereof) in searching and boring for oil, an amount sufficient to entitle the lessee there to a grant in fee of one or more of such locations under the provisions of the Act under which the lease was issued, such lessee shall be entitled to a grant in fee of any one or more of such locations as the case may be, and as the lessee may select.

CORRECTION OF DEEDS, FEES, ETC.

78. Whenever by reason of false survey or error any parcel of land contains less than the quantity of land mentioned in the grant, lease or license thereof, the Governor in Council may order to be repaid to the person who is the owner of said land at the time of a claim under this section such part of the price of fee paid to the Crown for the said parcel of land as will bear to such price or fee the proportion that the quantity of land found to be deficient bears to the total quantity mentioned in the grant, lease or license, but no such claim shall be entertained unless it be made within two years of the date of the grant, nor unless the deficiency be equal to one-tenth of the quantity described as granted.

79. In all cases in which grants, leases or licenses have been issued for the same land inconsistent with each other through error, and in all cases of sales or appropriations of the same land inconsistent with each other, the Governor in Council may in cases of sale cause a repayment of the purchase money, or when the land has passed from the original purchaser or has been improved before the discovery of the error or where the original grant, lease or license, was a free grant, he may in substitution, assign land, or grant a certificate entitling the party to purchase Crown lands of such value and to such an extent as to the Governor in Council may seem just and equitable under the circumstances; but no such claim shall be entertained unless it be preferred within one year from the discovery of the error.

80. Whenever a grant, lease or license, has been issued to or in the name of the wrong party, or contains any clerical error, misnomer, or wrong or defective description of the land thereby intended to be granted, or there is in such grant, lease or license, an omission of the conditions of the grant, lease or license, the Minister of Agriculture and Mines may (there being no adverse claim) direct the defective grant, lease or license, to be cancelled and a correct one to be issued in its stead, which corrected

grant, lease or license, shall relate back to the date of the one so cancelled, and be of the same effect as if issued at the date of such cancelled grant, lease or license.

81. When any grantee, lessee, or licensee, or other person, refuses or neglects to deliver up possession of any land after forfeiture of the same under the provisions of this Chapter, or whenever any person is wrongfully in possession of Crown land, or having lawfully entered into possession or occupation thereof, has in any way forfeited his right to such possession or occupancy, and refuses to vacate or abandon possession of the same, the Minister of Agriculture and Mines may apply to a Judge of the Supreme Court for an order, and the said Judge, upon proof to his satisfaction that such land was so forfeited and should properly revert to the Crown, or that such person is wrongfully in possession of Crown lands, shall grant an order upon the grantee, lessee, or licensee, or person or persons in possession, to deliver up the same to the Minister of Agriculture and Mines, or person by him authorized to receive such possession; and such order shall have the same force as a writ of *habere facias possessionem*, and the Sheriff shall execute the same in like manner as he would execute the said writ.

82. For the purpose of any proceeding at law by way of trespass or ejectment by any person holding or entitled to any mines, minerals, timber, bog, quarry or quarry rights, under any grant, lease or license from the Crown (or as assignee of any such grant, lease or license) he shall be held to have an interest in the land described in such grant, lease or license wherein or whereon such mines, minerals, timber, bog or quarry shall be.

GENERAL.

83. No grant, lease or license, whether styled in this Chapter a free grant, lease or license, or otherwise, shall issue but on the payment of the sum of not less than one dollar for the document of title, which sum shall be paid in stamps affixed to the document. All other fees, prices or rentals, shall be paid in cash.

84. No grant or lease shall issue to any person, in respect of which any price or rental is payable under this Chapter, until such price or rental be paid in full.

85. The Governor in Council shall prescribe rules and regulations as to the forms and modes of application for licenses, leases and

grants, and generally for the purpose of carrying out this Chapter, and for the management and conduct of business in the Department of the Minister of Agriculture and Mines, and may, from time to time, repeal, amend or alter such rules and regulations, and the same shall come into operation after one month's previous publication in the *Royal Gazette*, and two other newspapers in this Colony, and shall be as binding after such publication as if herein enacted.

86. All applications, whether for the licenses of occupation, or for leases or grants, shall be by petition to the Governor in Council.

(1) All petitions for grants under this Chapter, issuable upon the performance of any conditions, shall be accompanied by an affidavit showing how such conditions have been performed, which affidavit shall be made before a Justice of the Peace or Commissioner of Affidavits.

(2) All applications for licenses of occupation and for leases and grants, under this Chapter, shall be filed, with all accompanying papers, in the office of the Minister of Agriculture and Mines. A proper record shall be kept of such applications and of the date of their being received at the department.

(3) Duplicates of all licenses of occupation, and of all leases, shall be kept and recorded in the office of the Minister of Agriculture and Mines. All such records shall be open to the inspection of the public at reasonable hours, on payment of a fee of twenty cents for each search.

87. The Minister of Agriculture and Mines shall every year furnish to the Governor, for the purpose of being laid before the Legislature, a detailed return of licenses, leases and grants, of all mineral, agricultural, timber and other lands, and of all water rights, issued within the year ending the last day of June then last past, of all money received for the same, the names of the licensees, lessees and grantees, with the date of and expenses incurred in and about the same.

88. Any surveyor, when engaged in the performance of his duties as such, may pass over, measure along and ascertain the bearings of any section line or any government line, and for such purposes may pass over the land of any person whomsoever, doing no actual damage to the property of such person.

89. Any person who shall interrupt, molest or hinder a surveyor while in the discharge of his duties, or shall knowingly or wilfully pull down, deface, alter, or remove any mound, post or monument erected, planted or placed in any survey under the provisions of this Chapter or under the authority of any order in Council, shall, on conviction in a summary manner before a Stipendiary Magistrate, be liable to punishment by fine not exceeding twenty-five dollars or imprisonment for a period not exceeding three months, without prejudice to any civil remedy which any surveyor or any other party may have against the offender.

90. All mineral leases issued for a period of nine hundred and ninety-nine years under the provisions of Chapter 47 of the Consolidated Statutes (1872), entitled "Of Mines and Minerals," are hereby declared to be good, valid and subsisting, notwithstanding any provision in any Act to the contrary: provided that the lessees thereof and persons claiming through or under them have done nothing whereby the same shall have been rendered void or liable to forfeiture.

91. Nothing in this Chapter contained, except as herein set forth, shall be construed to affect the rights of persons holding grants, leases or licenses issued before the passing of this Chapter. Such grants, leases and licenses and rights thereunder shall continue in full force and effect as if this Chapter had not been passed, but shall be subject to all the provisions and conditions in this Chapter contained.

SCHEDULE.

TO FIND BOARD MEASURE OF LOG.

Multiply diameter at top in inches by half the diameter in inches, and the product by the length of the log in feet. Divide by twelve. The result will be board measurement in feet.

CHAPTER 130.

Of Crown Grants, the Subject of Proceedings by Petition in the Supreme Court.

SECTION

1.—Expenditure of moneys and performance of covenants dispensed with while grants are the subject of proceeding in Supreme Court.

SECTION

2.—Substituted grants may be issued if judgment so requires.

1. Whenever under the provisions of Section 158 of Chapter 83 of these Consolidated Statutes, entitled "Of the Supreme Court and Procedure therein," any person shall prefer a petition to the Supreme Court for or on account of any of the matters in the said section referred to against the grantee of any Crown grant or his assigns, such grantee or his assigns shall not be compelled to expend any sum of money upon the lands affected by such Crown grant from the date of the service of such petition to the date of final judgment in proceedings thereunder, and such grantee or his assigns shall not be subject to any of the conditions or covenants of the said Crown grant during the said period, and such Crown grant shall not become forfeited or be otherwise affected by the non-expenditure of money or the non-performance of the conditions or covenants during the said period.

2. If, in the proceedings under such petition, final judgment be pronounced that any party or parties to the said proceedings is or are entitled to such Crown grant, the Governor in Council may, on the application of such party or parties issue or cause to be issued a new Crown grant to him or them in substitution of the former Crown grant for such term not exceeding the full term granted by said Crown grant as to the Governor in Council shall seem just. The said new Crown grant shall be of like form to the former Crown grant, and may be issued under the provisions of the Act of the Legislature under which the former Crown grant was issued, notwithstanding that the said Act of the Legislature may have been amended or repealed.

CHAPTER 131.

Of the Regulation of Mines.

SECTION

- 1.—Interpretation section.
- 2.—Notice of accidents to Government Engineer.
- 3.—Abandoned mines to be fenced.
- 4.—Notices in other cases.
- 5.—Powers of Government Engineer.
- 6.—Report by Government Engineer of condition of mines if anything dangerous not remedied after notice.
- 7.—Plan of mines and workings.
- 8.—Investigation by Government Engineer.
- 9.—Rules to be observed in mines.
 - [1] Ventilation.
 - [2] Explosives.
 - [3] Age of person in charge of shaft.
 - [4] Dangerous water.
 - [5] Communicating signals.
 - [6] Back or counter balance.
 - [7] Underground roads.
 - [8] Manholes and places of refuge.
 - [9] Top of shaft.
 - [10] Ventilating or pumping shafts.
 - [11] Casing of shafts.
 - [12] Roofs and sides of travelling roads.
 - [13] Communicating signals.
 - [14] Cover for cage.
 - [15] Hoisting chains.
 - [16] Flanges on drums.
 - [17] Brakes on machines.
 - [18] Fencing of fly-wheels.
 - [19] Steam gauge.
 - [20] Ladders.
 - [21] Dressing accommodation above ground.

SECTION

- [22] Casing and fencing of certain shafts.
- [23] Damage to fencing, &c.
- [24] Observance of rules.
- [25] Examination of mine.
- [26] Appointment of examiners by miners.
- [27] Examination of seat of accident; Non-observance of rules an offence.
- 10.—Notices.
 - 11.—Offences by persons employed.
 - 12.—Penalty on owner, agent or manager.
 - 13.—Penalty on other person.
 - 14.—Prosecutions under Chapter.
 - 15.—No penalty if reasonable precautions taken.
 - 16.—Limitation of suits.
 - 17.—Application of penalties in certain cases.
 - 18.—Application of penalties generally.
 - 19.—Boys under 13, girls or women, not to be employed underground.
 - 20.—Special rules to be made for each mine.
 - 21.—Transmission of rules for approval.
 - 22.—Alterations in rules by Governor-in-Council.
 - 23.—Amendment of rules.
 - 24.—Penalties relating to special rules.
 - 25.—Evidence of special rules.
 - 26.—Publication of law and rules.
 - 27.—Penalty for default in publication.
 - 28.—Defacement of notices of rules, &c.
 - 29.—General rules to be made by Governor in Council.
 - 30.—Annual returns by managers.
 - 31.—Surgical supplies to be kept at mines.
 - 32.—Conveyance and attendance of injured persons.

1. In this Chapter and in any special rules made under the provisions thereof, unless the context otherwise requires,—

- (1) "Mine" includes every shaft in the course of being sunk, and every level and inclined plane in the course of being driven for commencing or opening any such mine, or for searching for or proving minerals, and all the shafts, levels, planes, works, machinery, tramways, railways and sidings, both below ground and above ground, in and adjacent to a mine, and any such shaft, level and inclined plane of and belonging to the mine;
- (2) "Shaft" includes pit and slope;
- (3) "Inclined plane" includes slope;
- (4) "Plan" includes a map and section or sections and a correct copy or tracing of any original plan as so defined;

- (5) "Owner," in relation to any mine, means any person or body corporate who is the immediate proprietor, or lessee, or occupier of any mine, or of any part thereof, and does not include a person or body corporate who merely receives a royalty or rent from a mine, or is merely the proprietor of a mine subject to any lease, grant or license for the working thereof, or is merely the owner of the soil, and not interested in the minerals of the mine; but any contractor for the working of any mine or any part thereof shall be subject to this Chapter in like manner as if he was an owner, but so as not to exempt the owner from any liability;
 - (6) "Agent," in relation to any mine, means any person having, on behalf of the owner, care or direction of any mine or any part thereof;
 - (7) "Shift" means a body of men or boys, or both (other than men or boys engaged in attending to the ventilation of a mine), who go to work in a mine at a set period of the day.
 - (8) "Serious personal injury," means injury which is likely to incapacitate a person from working for a period longer than three days.
- 2.** (1) Where in or about any mine, whether above or below ground, either,—
- (a) Loss of life or any personal injury to any person employed in or about the mine occurs by reason of any explosion of gas, powder, dynamite, or other explosive, or of any steam boiler; or
 - (b) Loss of life or any serious personal injury to any person employed in or about the mine, occurs by reason of any accident whatever, the owner, agent or manager of the mine shall within twenty-four hours next after the explosion or accident, send notice in writing of the explosion or accident, and of the loss of life or personal injury occasioned thereby, to the Government Engineer, and shall specify in such notice the character of the explosion or accident, and the number of persons killed and injured respectively, and as soon after as possible and before the end of each year a return of facts relating to such accident or explosion in the form given in the Schedule A to this Chapter.

- (2) Where any personal injury, of which notice is required to be sent under this section, results in the death of the person injured, notice in writing of the death shall be sent to the Government Engineer within twenty-four hours after such death comes to the knowledge of the owner, agent or manager.
 - (3) When loss of life or serious personal injury has immediately resulted from an explosion or an accident in a mine, the place where the explosion or accident occurred shall be left as it was immediately after the explosion or accident until the expiration of at least three days after the sending of the notice provided by this section, or until the visit to the place by the Government engineer or other person appointed, whichever first happens, unless compliance with this section would tend to increase or continue a danger or impede the working of the mine.
 - (4) Every owner, agent or manager who fails to act in compliance with this section shall be guilty of an offence against this Chapter.
3. (1) Where any mine has been abandoned, or the working thereof has been discontinued, the owner thereof, or his agent or manager, shall cause the top of the shaft and all entrances from the surface, and all pits and openings, dangerous by reason of their depth, to be and to be kept securely fenced for the prevention of accidents.
- (2) When any mine has been abandoned the owner thereof, or his agent or manager, shall, if required by the Government Engineer, within three months after such abandonment, send to the Government Engineer an accurate plan of the workings of such mine up to the time of the abandonment on a scale of not less than two chains to one inch.
 - (3) Every such owner, agent or manager who fails to comply with this section shall be guilty of an offence against this Chapter.
4. (1) In any case,—
- (a) Where any change occurs in the name of any mine, or in the name of the owner or agent of any mine;

- (b) Where any working is commenced for the purpose of opening a mine;
 - (c) Where a shaft of any mine is abandoned or the working thereof discontinued; or
 - (d) Where the working of a mine is recommenced after an abandonment or discontinuance for a period exceeding two months;
the owner, agent or manager of such mine shall give notice thereof to the Government Engineer within two months after such change, commencement, abandonment, discontinuance or recommencement.
- (2) If such notice is not given the owner, agent or manager shall be guilty of an offence against this Chapter.
- (3) This section shall not apply to,—
- (a) Any working or mine in which not more than twelve men are ordinarily employed below ground; or
 - (b) Any working or mine exempted from compliance with this section by the Government Engineer.
5. (1) The Government Engineer shall have power to do all or any of the following things, namely:—
- (a) To make such examination and inquiry as is necessary to ascertain whether the provisions of this Chapter relating to matters above ground or below ground are complied with in the case of any mine;
 - (b) To enter, inspect and examine any mine, and every part thereof, at all reasonable times by day and night, but so as not to impede or obstruct the working of the mine;
 - (c) To examine into and make inquiry respecting the state and condition of any mine, or any part thereof, and the ventilation of the mine, and the sufficiency of any special rules for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto;
 - (d) To exercise such other powers as are necessary for carrying this Chapter into effect.

- (2) Every person who wilfully obstructs the Government Engineer in the execution of his duty under this Chapter, and every owner, agent or manager of a mine, who refuses or neglects to furnish to the Government Engineer the means necessary for making any entry, inspection, examination or inquiry under this Chapter in relation to such mine, shall be guilty of an offence against this Chapter.
6. (1) If in any respect (which is not provided against by any express provision of this Chapter or by any special rule) the Government Engineer finds any mine, or any part thereof, or any matter, thing or practice in or connected with any such mine to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, or to the waste or misuse of any property of or leased from the Crown, the Government Engineer may give notice in writing thereof to the owner, agent or manager of the mine, and shall state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing or practice, to be dangerous or defective, and require the same to be remedied; and unless the same is forthwith remedied he shall report the same to the Minister of Agriculture and Mines.
- (2) If the owner, agent or manager of the mine objects to remedy the matter complained of in the notice, he may, within ten days after the receipt of such notice, send his objection in writing, stating the grounds thereof, to the Minister of Agriculture and Mines, and thereupon the matter shall be decided by arbitration, one arbitrator to be appointed by the Minister of Agriculture and Mines, one appointed by such owner or agent, the third by the resident Magistrate or Justice of the Peace; the award of the majority shall be final.
- (3) Five days' notice of the time and place at which the arbitrators will hear such matter shall be given to the parties interested.
- (4) If the owner or agent fails,—
- (1) When no such objection is sent, to comply with the requisition of the notice within ten days after the expiration of the time for objection; or

(b) When there has been an arbitration, to comply with the award within the time fixed by the award;
he shall be guilty of an offence against this Chapter, and the notice and the award shall respectively be deemed to be written notice of the offence.

(5) The Government Engineer, if satisfied that the owner or agent has taken active measures for complying with the notice or decision, but has not with reasonable diligence been able to complete the works, may extend such time of five days to such time as he deems proper; and if the works are completed within such time no penalty shall be inflicted.

(6) No person shall be precluded by any agreement from doing such acts as are necessary to comply with the provisions of this section, or be liable under any contract to any penalty or forfeiture for doing such acts.

7. (1) The owner, agent or manager of every mine, who is thereto required in writing by the Government Engineer, shall keep in the office at the mine an accurate plan of the workings of such mine, showing the workings up to a date not more than six months previously, and shall, when so required, produce such plan to the Government Engineer, and mark thereon the progress of the workings up to the time of such production, and furnish the Government Engineer a correct copy of such plan when so requested.

(2) Every owner, agent or manager who—

(a) Fails to keep such plan when so required; or

(b) Refuses to produce the same to the Government Engineer and allow it to be examined by him; or

(c) Refuses on request to mark on such plan the state of the workings of the mine; or

(d) Conceals any part of such workings; or

(e) Produces an imperfect or inaccurate plan;
shall (unless he shows that he was ignorant of the concealment, imperfection or inaccuracy), be guilty of an offence against this Chapter.

8. Where it appears to the Government Engineer that a formal in-

vestigation of any accident in any mine, or of any matter connected with the working of any mine, is expedient, the Government Engineer may hold such investigation, and with respect to any such investigation the following provisions shall have effect:—

- (1) The Government Engineer may appoint any person or persons possessing legal or special knowledge to act with him as assessor or assessors in holding the investigation.
- (2) The Government Engineer shall make such investigation in such manner and under such conditions as he thinks most effectual for the making of a full investigation.
- (3) The Government Engineer, for the purposes of the investigation, shall have the following powers, namely:
 - (a) Power to enter or inspect any mine, building or place, the entry or inspection of which appears to him expedient;
 - (b) Power, by summons signed by him, to require the attendance of any person, and to require of such person such answers or returns to inquiries as he thinks fit;
 - (c) Power to require the production of any book, paper or document which he thinks important upon such investigation;
 - (d) Power to administer an oath; and
 - (e) All powers conferred upon him by this Chapter.
- (4) Any person attending before the Government Engineer in obedience to any such summons, shall be allowed the fees paid to a witness attending a trial in the Supreme Court.
- (5) Any person who, without reasonable excuse, either fails (after having had any fees to which he is entitled tendered to him), to comply with any summons requiring him to attend before the Government Engineer upon any such investigation, or refuses to produce any document which he is required by the Government Engineer to produce, or prevents or impedes the Government Engineer when engaged upon such investigation, shall for each offence be liable to a penalty not exceeding fifty dollars, or to imprisonment for a term not exceeding twenty days, and in addition thereto may be proceeded against in the Supreme Court as for a contempt of such Court.

- (6) The Government Engineer shall make a report upon such an investigation to the Minister of Agriculture and Mines.
- (7) When from any cause the Government Engineer is unable to hold an investigation, as provided by this section, it shall be lawful for him to appoint any Stipendiary Magistrate to hold such investigation, and for such purpose such Magistrate shall have and exercise all the powers conferred on the Government Engineer by this section and all persons summoned or attending before such Magistrate shall be entitled to the same fees and subject to the same penalties as are provided in the case of persons summoned or attending before the Government Engineer. The Magistrate holding such investigation shall forthwith make his report, and forward the same, together with the evidence taken, to the Government Engineer.
- (8) Any expense incurred in and about any such investigation (including the remuneration of any person to act as assessor) shall be paid out of the Treasury of the Colony.
9. (1) The following general rules shall be observed, so far as is reasonably practicable, in every mine:

Rule 1.—An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless noxious gases to such extent that the working places of the shafts, levels, stable, winzes, pumps and workings of the mine, and the travelling roads to and from such working places, shall be in a fit state for working and passing therein.

Rule 2.—The following provisions shall relate to the use of any explosive:

- (1) It shall not be stored in the mine;
- (2) It shall not be taken into any mine in which more than twelve men are employed, in quantities exceeding the requirements of one day;
- (3) In any such mine the explosives shall be under the special charge of one man, and the firing of the explosives shall also be under the control and supervision of some man specially appointed for that purpose.

Rule 3.—(1) When there is a shaft or an inclined plane or level in any mine, whether for the purpose of an entrance to such

mine or of a communication from one part to another part of such mine, and persons are taken up or down or along such shaft, plane or level by means of any engine, windlass or gin driven or worked by steam or any mechanical power, or by an animal or by manual labor, a person shall not be allowed to have charge of such engine, windlass or gin, or of any part of the machinery, ropes, chains or tackle connected therewith, unless he is a male person of at least eighteen years of age.

- (2) Where the engine, windlass or gin is worked by an animal, the person under whose direction the driver of the animal acts, shall, for the purpose of this section, be deemed to be the person in charge of the engine, windlass or gin; but such driver shall not be under fourteen years of age. This clause shall not apply to operations known in the mines as counter or back balances.

Rule 4.—Where a place is likely to contain a dangerous accumulation of water the working approaching such place shall not exceed eight feet in width or height, and there shall be constantly kept at a sufficient distance, not being less than five yards in advance, at least one bore-hole near the centre of the working and sufficient flank bore-holes on each side.

Rule 5.—Every underground plane on which persons travel, which is self-acting or worked by an engine, windlass or gin, shall be provided (if exceeding thirty yards in length) with some proper means of communicating distinct and definite signals between the stopping places and the ends of the plane, and shall be provided in every case, at intervals of not more than twenty yards, with sufficient man-holes or places of refuge.

Rule 6.—Every back or counter balance used for raising or lowering minerals, if exceeding thirty yards in length, shall, unless exempted in writing by the Government Engineer, be provided with some proper means of communicating distinct and definite signals between the lower end and between the entrance of every working place thereon for the time being in work and the upper end thereof.

Rule 7.—(1) Every road on which persons travel underground where the produce of the mine in transit exceeds ten tons in any one hour over any part thereof, and where the load is drawn by a horse or other animal, shall be provided, where there is not standing room of at least two feet, at

intervals of not more than twenty-five yards, with sufficient man-holes or with places of refuge, and every such place of refuge shall be of sufficient length and of at least three feet in width between the waggons running on the tram-road and the side of such road.

- (2) Where the load is drawn by machinery or other mechanical appliance, and there is not standing room of at least two feet, there shall be provided at intervals of not more than fifteen yards, sufficient man-holes or places of refuge, and every such place of refuge shall be of sufficient length and of at least three feet in width, between the waggons running on the tramroad and the side of such road.
- (3) Whenever in the opinion of the Government Engineer the precautions required by this rule with respect to roads over which minerals are drawn by machinery or other mechanical appliances are not sufficient for the safety of the men travelling thereon, he may require the owner, agent or manager of the mine to provide a separate travelling road.

Rule 8.—Every man-hole and place of refuge shall be constantly kept clear, and no person shall place anything in a man-hole or place of refuge so as to prevent access thereto.

Rule 9.—The top of every shaft which for the time being is out of use, or used only as an air shaft, shall be kept securely fenced.

Rule 10.—The top and all entrances between the top and bottom of every working, ventilating or pumping shaft shall be properly fenced; but this shall not be taken to forbid the temporary removal of the fence for the purpose of repairs or other operations, if proper precautions are used.

Rule 11.—Where the natural strata are not safe every working or pumping shaft shall be securely cased, lined, or otherwise made secure.

Rule 12.—The roof and sides of every travelling road and working place shall be made secure, and a person shall not, unless appointed for the purpose of exploring or repairing, travel or work in any such travelling road or working place which is not so made secure.

Rule 13.—Every working shaft used for the purpose of drawing minerals, or for the lowering or raising of persons, shall, if exceeding fifty yards in depth, and not exempted in writing by the Government Engineer, be provided with guides and some proper means of communicating distinct and definite signals from the bottom of the shaft, and from every

entrance for the time being in use between the surface and the bottom of the shaft to the surface and from the surface to the bottom of the shaft and to every entrance for the time being in use between the surface and the bottom of the shaft.

Rule 14.—A sufficient cover overhead shall be used for every cage or tub employed in lowering or raising persons in any working shaft, except where the cage or tub is worked by a windlass, or where any persons are employed at work in the shaft, or where a written exemption is given by the Government Engineer.

Rule 15.—A single-linked chain shall not be used for lowering or raising persons in any working shaft or place except for the short coupling chain attached to the cage or load.

Rule 16.—There shall be on the drum of every machine used for lowering or raising persons such flanges or horns, and also, if the drum is conical, such other appliances as are sufficient to prevent the rope from slipping.

Rule 17.—There shall be attached to every machine worked by steam, water or mechanical power, and used for lowering or raising persons, an adequate brake, and also a proper indicator (in addition to any mark on the rope) showing the person who works the machine the position of the cage or load in the shaft.

Rule 18.—Every fly-wheel, and all exposed and dangerous parts of the machinery used in or about the mine, shall be and be kept securely fenced.

Rule 19.—Every steam boiler shall be provided with a proper steam guage and water guage, to show respectively the pressure of steam and the height of water in the boiler, and with a proper safety valve.

Rule 20.—A ladder, permanently used for the ascent or descent of persons in the mine, shall not be fixed in a vertical or overhanging position, and shall be inclined at the most convenient angle which the space in which the ladder is fixed allows; and every such ladder shall have substantial platforms at intervals of not more than twenty yards.

Rule 21.—If more than twelve persons are ordinarily employed in the mine below ground, sufficient accommodation shall be provided above ground near the principal entrance of the mine, and not in the engine-room or boiler-room, for enabling the persons employed in the mine to conveniently dry and change their clothing.

Rule 22.—Where one portion of a shaft is used for the ascent and descent of persons by ladders or otherwise, and another portion is used for raising the materials gotten in the mine, the first mentioned portion shall be either cased or otherwise securely fenced off from the last mentioned portion, or no person shall be permitted to travel in the shaft when the shaft is working.

Rule 23.—No person shall wilfully damage, or without proper authority remove or render useless, any fence, fencing, casing, lining, guide, means of signalling, signal, cover, chain, flange, horn, brake, indicator, ladder, platform, steam gauge, water gauge, safety valve, or other appliance or thing provided for any mine in compliance with this Chapter.

Rule 24.—Every person shall observe such directions with respect to working as are given to him with a view to comply with this Chapter, or any special rules in force under this Chapter in the mine.

Rule 25.—A competent person or persons, who shall be appointed for the purpose, shall, once at least in every twenty-four hours, examine the state of the external parts of the machinery and the state of the head gear, working places, levels, planes, ropes, chains, and other works of the mine which are in actual use; and once at least in every week shall examine the state of the shafts by which persons ascend or descend, and the guides or conductors therein.

Rule 26.—The persons employed in a mine may from time to time appoint two of their number to inspect the mine, at their own cost; and the persons so appointed shall be allowed, once at least in every month, accompanied, if the owner, agent or the manager of the mine thinks fit, by himself or one or more of the officers of the mine, to go to every part of the mine, and to inspect the shafts, levels, planes, working places, return air-ways, ventilating apparatus, old workings and machinery, and shall be afforded, by the owner, agent or manager, and all persons in the mine, every facility for the purpose of such inspection and shall make a true report of the result of such inspection; and such report shall be recorded in a book to be kept at the mine for the purpose, and shall be signed by the persons who made the same.

Rule 27.—The majority of the workmen at any mine may appoint a person to examine the seat of any accident resulting in the death or injury of any person.

- (2) Every person who contravenes or does not comply with any of the general rules in this section shall be guilty of an offence against this Chapter; and in the event of any contra-

vention of or non-compliance with any of such general rules in the case of any mine by any person whomsoever being proved, the owner, agent or manager shall each be guilty of an offence against this Chapter, unless he proves that he had taken all reasonable means to prevent such contravention or non-compliance, by publishing, and to the best of his power enforcing the said rules as regulations for the working of the mine.

10. All notices required by this Chapter shall be in writing or print, or partly in writing and partly in print; and all notices and documents required by this Chapter to be served or sent by or to the Government Engineer may be either delivered personally or served or sent by post, by a pre-paid registered letter; and if served or sent by post shall be deemed to have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post.

11. Every person employed in or about a mine, other than an owner, agent or manager, who is guilty of any act or omission, which in the case of any owner, agent or manager, would be an offence against this Chapter, shall be guilty of an offence against this Chapter.

12. (1) Every owner, agent or manager, who is guilty of an offence against this Chapter shall be liable to a penalty not exceeding eighty dollars.

(2) If such offence is committed or continued after notice thereof given by the Government Engineer a further penalty of five dollars for each violation, or for each day that such violation continues after such notice, shall be imposed.

13. Every person other than an owner, agent or manager who is guilty of an offence against this Chapter, shall be liable to a penalty of eight dollars.

14. No prosecution shall be instituted against the owner, agent or manager of any mine for an offence against this Chapter, except,—

(1) By the Government Engineer; or

(2) With the consent in writing of the Minister of Agriculture and Mines.

15. In any prosecution or other proceeding against an owner, agent or manager of any mine for an offence against this Chapter, such owner, agent or manager shall be discharged if he proves that he took all reasonable means to prevent the commission of such offence.

16. Any complaint or suit made or brought in pursuance of this Chapter shall be made or brought within six months from the time when the matter of such complaint or suit came to the knowledge of the prosecutor.

17. When a penalty is imposed under this Chapter for neglecting to send a notice of any explosion or accident, or for any offence against this Chapter which has occasioned loss of life or personal injury, the Minister of Agriculture and Mines may (if he think fit) direct such penalty to be paid to or distributed among the persons injured and the relatives of any persons whose death has been occasioned by such explosion, accident or offence, or among some of them; provided that such persons did not, in his opinion, occasion or contribute to occasion the explosion or accident, and did not commit and were not parties to the commission of the offence.

18. Except as in this Chapter otherwise provided, penalties imposed in pursuance of this Chapter, shall be paid on receipt of the same into the Treasury of the Colony.

19. No boy under the age of thirteen and no girl or woman of any age shall be employed in or allowed to be for the purpose of employment in any mine below ground.

20. (1) There shall be established in every mine such rules (referred to in this Chapter as Special Rules) for the conduct and guidance of the persons acting in the management of such mine, or employed in or about the mine as under the particular circumstances of such mine may appear best calculated to prevent dangerous accidents and to provide for the safety, convenience and proper discipline of the persons employed in or about the mine.

(2) Such special rules, when established, shall be signed in duplicate by the Government engineer at the time the rules are established, and shall be observed in and about every such mine (including any extension thereof) in the same manner as if they were enacted in this Chapter.

(3) If any person who is bound to observe the Special Rules established for any mine acts in contravention of, or fails to comply with any of them, he shall be guilty of an offence against this Chapter, and also the owner, agent and manager of such mine shall each be guilty of an offence against this Chapter unless he proves that he had taken all reasonable means by publishing, and to the best of his power enforcing the rules and regulations for the working of the mine so as to prevent such contravention or non-compliance.

21. (1) The owner, agent or manager of every mine shall form and transmit to the Government Engineer for approval by the Governor in Council, Special Rules for the mine within three months after the commencement of any working for the purpose of opening a new mine or of renewing the working of an old mine.

(2) The proposed Special Rules, together with a printed notice that any objection to the rules on the ground of anything contained therein, or omitted therefrom, may be sent by any of the persons employed in the mine to the Government Engineer, at his address stated in the notice, shall during not less than two weeks before the Rules are transmitted to the Government Engineer, be placed and kept in a conspicuous place in like manner as is provided in this Chapter respecting the publication of Special Rules, for the information of persons employed in the mine, and a certificate that such rules and notice have been so placed and kept shall be sent to the Government Engineer with two copies of the rules signed by the person sending the same.

(3) If the rules are not objected to by the Governor in Council within forty days after their receipt by the Government Engineer, they shall be established.

22. (1) If the Governor in Council is of opinion that the proposed rules so transmitted, or any of them, do not sufficiently provide for the prevention of dangerous accidents in the mine, or for the safety and convenience of the persons in or about the mine, or are unreasonable, he may, within forty days after the Rules are received by the Government Engineer, object to the Rules, and propose to the owner, agent or manager in writing any modifications in the Rules by

way either of omission, alteration, substitution or addition.

- (2) If the owner, agent, or manager does not within twenty days after the modifications proposed by the Governor in Council are received by him, object in writing to them, the proposed Special Rules with those modifications shall be established.
- (3) If the owner, agent, or manager sends his objection in writing within the said twenty days to the Government Engineer, the matter shall be referred to arbitration in the manner provided by Section 6 of this Chapter, and the date of the receipt of the objection shall be deemed to be the date of reference, and the Rules shall be established as settled by an award of arbitration.

23. (1) After Special Rules are established under this Chapter in any mine, the owner, agent, or manager may from time to time propose in writing to the Government Engineer, for the approval of the Governor in Council, any amendment of the Rules or any new Special Rules, and the provisions of this Chapter with respect to the original Special Rules shall apply to all such amendments and new rules in like manner as nearly as may be as they apply to the original rules.

- (2) The Governor in Council may, from time to time, propose to the owner, agent, or manager of the mine any new special rules or any amendment of the Special Rules and the provisions of this Chapter with respect to a proposal by the Governor in Council for modifying the Special Rules transmitted by the owner, agent, or manager of a mine shall apply to all such new special rules and amendments in like manner as nearly as may be as they apply to the proposal.

24. If the owner, agent, or manager of a mine make any false statement with respect to the placing and keeping as aforesaid of the rules and notices, he shall be guilty of an offence against this Chapter; and if special rules for any mine are not transmitted within the time limited by this Chapter to the Government Engineer for the approval of the Governor in Council, the owner, agent, and manager of such mine shall each be guilty of an offence against this Chapter unless he proves that he had taken all reasonable means by enforcing to the best of his power the provisions of this Chapter to secure the transmission of the rules.

25. The Government Engineer shall, when required, certify a copy which is shown to his satisfaction to be a true copy of any Special Rules which for the time being are established under this Chapter in any mine, and a copy so certified shall be evidence (but not to the exclusion of other proof) of such Special Rules, and of the fact that they are duly established under this Chapter and have been signed by the Government Engineer.

26. For the purpose of making known the provisions of this Chapter, and of the Special Rules to all persons employed in and about each mine, an abstract of this Chapter, supplied by the Department of Agriculture and Mines, and a correct copy of all the Special Rules, shall be published as follows:

- (1) The owner, agent, or manager of the mine shall cause the said abstract and copy of the rules to be placed and kept in some conspicuous place at or near the mine where they may be conveniently read by the persons employed.
- (2) The owner, agent, or manager shall supply gratis to any person employed in or about the mine, who shall make application for same, a printed copy of the said abstract and Special Rules.
- (3) Every copy of the Special Rules shall be kept distinct from any rules which depend only on the contract between the employer and the employed.

27. In the event of any non-compliance with the provisions of the next preceding section, the owner, agent and manager of the mine shall each be guilty of an offence against this Chapter.

28. Every person who pulls down, injures, defaces, or removes any notice, proposed Special Rules, abstract or special rules placed or kept in pursuance of the provisions of this Chapter or any notice posted up in pursuance of the Special Rules, shall be guilty of an offence against this Chapter.

29. It shall be lawful for the Governor in Council to make such general rules as may be deemed necessary for the proper sanitation of mines, and of the area comprised in the operation thereof, and for the storing and transport of explosives into, to and from mines, which general rules, when published in the *Royal Gazette*, shall have the force and effect of law as if herein enacted.

30. On or before the 31st day of January in every year, the owner, agent or manager of every mine shall send to the Minister of Agriculture and Mines a correct return specifying the particulars contained in the Schedule B hereto, in respect of the year ending on the preceding 31st day of December; provided that so much of the said returns as relates to the quantity of mineral wrought or gotten shall not be published without the consent of such owner, agent, or manager.

31. In every mine there shall be a room in which shall be kept such a proper supply of lint, bandages, tourniquets and other surgical accessories as the size of the mine demands, and also a sufficient number of ambulance stretchers. In a mine in which a greater number of men than two hundred are employed the ambulance shall be in charge of a person approved of by a duly qualified medical practitioner.

32. It shall be the duty of the owner, agent and manager of every mine in the case of an accident involving serious personal injury, to send for the nearest medical practitioner and to convey any person who has suffered any serious personal injury to his own home or to hospital, at the expense of such owner, agent or manager.

SCHEDULE A.

(Name of Company.)

To the Government Engineer,
St. John's.

We hereby notify you that the person described on the margin, being at the time employed by us, in our works at

..... in the capacity of

was injured on19..,

at o'clock M.

Cause and manner of injury were as follows:

.....
.....
.....

.....19

Name

Age

Married or Single?

Rate Nationality

Speaks and understands

English?

How long in your service

.....

How long employed at work

he was doing when hurt?

.....

Was this regular duty of em-

ployee?

Nature and extent of injury; give physician's report, if any:

.....

Was the injury due to any negligence or fault, and (if so) whose and what?

Steps taken for immediate relief

Has the injured person to your knowledge any accident or benefit insurance?

Is the accident likely to be serious?

Notice made out by

Position with employer

The persons named below either saw the accident or heard the injured person's statement of how it happened:

.....

.....*Manager.*

SCHEDULE B.

Form of Return.

Year ending of, 19...

Name of Mine

Situation of Mine

Name of Owner (Company)

Name of Manager

Name of Under Manager

Address

.....

Persons Employed During Year.

		Jan.	Feb.	March.	April.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.
Underground :	Boys 13 to 16.....												
	Males over 16.....												
	Ttl. Underground												
Above Ground :	Boys 12 to 13.....												
Including those employ-	Girls 12 to 13.....												
ed at any work in con-	Boys 13 to 16.....												
nection with mine.	Girls 13 to 16.....												
	Females over 16...												
	Males over 16.....												
	Ttl. above Ground												
	Total Employed												

Quantity of Minerals Wrought or Gotten During Year.

MINERALS GOTTEN.	No. Tons	Manufct'd or used in country.	Exported to what Market	Value of Crude Material at Mine
Iron				
Copper				
Other Mineral by name				
Total				

CHAPTER 132.

Of the Discovery of Minerals.

SECTION

1.—Discoverer of minerals may file his claim.

SECTION

2.—Reward to be paid him if and when such minerals are worked.

1. It shall be lawful for any person who shall make any discovery of minerals in this Colony, at the time of making application for a license for the same or without making any such application, to file in the office of the Minister of Agriculture and Mines a claim in writing, verified by affidavit, setting forth that he is the first and original discoverer of such mineral, what said mineral is, and as accurately as possible the situation of the deposit. The Minister of Agriculture and Mines, immediately upon the filing of such claim, shall give public notice in the *Royal Gazette* and one other newspaper setting forth briefly the facts contained in said claim and the name of the claimant, and calling upon all persons who may dispute such claimant's right as first or original discoverer to give notice to his Department of any objection thereto within sixty days thereafter. If at the expiration of the said period of sixty days no such objections are received at the Department, the claimant shall be deemed to be the true first and original discoverer, and his name and the location of his discovery shall be registered in a book to be kept in the said Department called "The Register of Mineral Discoveries." If any such objections are received at the said Department, then immediately upon the expiration of the said period of sixty days, the Minister shall summon all parties making such objections, and the claimant, by notice in writing, to appear before him, and after hearing such of the said parties as shall appear in obedience to said summons, either separately or together, shall report thereon to the Governor in Council, who shall determine who is the true first or original discoverer and cause his name and the location of the discovery to be registered in manner aforesaid. The decision of the Governor in Council shall be final.

2. If at any time thereafter any such location shall be developed or operated, the person registered as the true first or original discoverer thereof shall be entitled to receive and shall receive from the funds of the Colony the sum of one thousand dollars; provided that no such location shall be held to be developed or operated unless at least fifty men shall

have been continuously employed in actual mining thereon for a period of at least one year. And provided also that such discoverer shall not be deprived of any of the rights herein conferred by reason only that any such discovery is made upon private lands.

CHAPTER 133.

Of the Smelting of Copper Ores.

SECTION

- 1.—Smelters to be admitted free of duty.
- 2.—Bounties on copper ore mined.
- 3.—Cost of smelters to be included in reckoning.

SECTION

- 4.—Bounties on copper smelted.
- 5.—Certificate for payment.

1. Smelters for use in the Colony for smelting copper and parts of the same and all machinery to be used in connection with the same, and coke to be used for smelting purposes, shall be admitted into this Colony free of duty.

2. There shall be paid to the proprietor of every copper mining claim a bounty on all copper ore mined from such claim and smelted in this Colony, that is to say, one dollar for every ton of smeltable ore landed at the smelting works up to the quantity of one hundred tons from one mining location in any one year, and fifty cents per ton for every ton over one hundred up to five hundred tons of smeltable ore landed at the smelting works from one mining location in any one year; provided that the owner or owners of any smelting works shall not be entitled to any such bounty for any ore smelted which was mined upon any mining location the property of such owner or owners.

3. If the owners of any smelting works are the lessees of any copper mining locations in the Colony, for which they are entitled to a grant in fee simple upon the expenditure of six thousand dollars in surface and subterranean mining, then in estimating the said expenditure of six thousand dollars, it shall be lawful to take into account for such purpose and to include in such amount the cost of smelting any such copper ore mined on any such location so as to entitle the owner or owners of said smelting works to a grant in fee simple of any copper mining location of which they are the lessees.

4. There shall be annually paid for the period of twenty years from the 29th day of March, A.D. 1911, to the owner of every smelter for smelting copper ore in this Colony, a sum equal to three and one half per cent. on the capital invested by him in the work of smelting copper, provided that no payment shall be made in any year in which the said smelt-

er is not *bona fide* and continuously operated, and that no greater sum than an amount equal to three and one half per cent. on fifty thousand dollars shall be paid in any year to any one person or company.

5. Such yearly payment will be made upon the certificate of the Minister of Agriculture and Mines and the Government Engineer, which shall be final as to *bona fide* and continuous operation.

CHAPTER 134.

Of the Operation of Saw Mills.

SECTION

- 1.—Saw-mill licenses issuable to fishermen; conditions.
- 2.—Annual licenses to persons operating saw mills on three mile limit; conditions.
- 3.—Scale for estimating board measure.

SECTION

- 4.—Prohibiting of rinding trees.
- 5.—Penalties.
- 6.—Reservation of timber areas
- 7.—Interpretation section.
- 8.—Timber cut on Crown lands to be removed within 18 months.

1. Any *bona fide* fisherman who wishes to operate a saw mill for the purpose of preparing staves or heading for making barrels for fishery requirements, or for the making of shingles, lobster laths or lobster boxes, whose whole cut of timber for other purposes does not exceed 10,000 feet board measure in any one year, may obtain, free of cost, a license to operate a saw mill for such purposes, and any other purpose in such quantity, subject to the following conditions:—

- (1) The license may be granted by the Minister of Agriculture and Mines for one year, from the 30th of November, upon the application of the *bona fide* fisherman, as aforesaid, who shall set forth in his application that he is such fisherman, and also the situation of his mill, its capacity, and the period during which it has been in operation. The Minister of Agriculture and Mines may, in his discretion renew the said license annually.
- (2) The licensee shall make returns to the Department of Agriculture and Mines, quarterly, or at such periods as may be required by the Minister of Agriculture and Mines, sworn to by him or his agent, showing the quantity disposed of or sold of all sawn lumber, timber, railway car stuff, ship timber and knees, shingles, laths, cordwood or bark or any other product of timber in whatever form the same may be disposed of, or sold, by him during such quarter or other period, and the price or value thereof, under a penalty for every default of twenty dollars, to be recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace.
- (3) The licensee shall prevent unnecessary destruction of growing timber on the part of his men, and shall exercise strict and

constant supervision to prevent the origin and spread of fires.

- (4) The license shall entitle the licensee to operate a saw mill and to cut timber therefor on Crown land, and to purchase timber so cut and to manufacture the same in his mill in the manner, and to the quantity hereinbefore provided.
- (5) The licensee shall pay annually a royalty of ten cents per thousand on all shingles manufactured in or by his mill.
- (6) No person, without obtaining a license as hereinbefore provided, shall operate a saw mill of the class described in this section under a penalty not exceeding twenty dollars for every day when such mill is so operated; and all such licenses issued shall terminate on the thirtieth day of November in every year.
- (7) Before the granting of a new license three months notice shall be given in the *Royal Gazette* and one weekly paper published in this Colony, and the Department of Agriculture and Mines shall forward a copy of such notice to the representatives in the Legislature for the district in which the mill sought to be licensed is situated.
- (8) The quantity of timber which a licensee under this section shall be permitted to manufacture in staves or heading for making barrels for fishery requirements or for the making of shingles, lobster laths, or lobster boxes, shall not exceed a total of 50,000 feet board measure in any one year.

But any such person actually engaged in the construction of any boat or vessel may be permitted to have such quantity of lumber as may be *bona fide* required for such actual construction sawn or manufactured in a saw mill and such sawing or manufacture shall not be a violation of the provisions of this Chapter.

2. It shall be lawful for the Minister of Agriculture and Mines to issue licenses to persons or companies who were on the Eleventh day of March 1914 operating mills and are not the holders of timber or pulp licenses, to cut timber and to operate saw mills for one year from the thirtieth of November, which said licenses shall be renewable at the discretion of the Minister of Agriculture and Mines on payment of a fee of five dollars. The licensee of any such license shall pay, as a royalty, the

sum of one dollar per thousand feet, board measure, on all lumber sawn or manufactured in the mill operated under authority thereof.

- (1) The said license shall terminate on the 30th November in each year. The fee for the said license shall be affixed thereto in stamps. The license shall be returned to the Minister of Agriculture and Mines before the 30th of November in each year accompanied by the amount of the fee. The absence of a stamp on said license, with the date of the year in which the same was affixed, shall be conclusive evidence that the said license was not renewed for the year in which such stamp was not affixed.
- (2) The license shall be produced by the licensee to an Inspector or other person authorized by the Minister of Agriculture and Mines.
- (3) Such license shall be subject to all the provisions of Chapter 129 of the Consolidated Statutes (Third Series) as to scale, making returns, inspection of books, for date, payment of royalty, and otherwise, except that return for royalty shall be the quantity actually manufactured in the mill, and such other conditions as to the area in which the licensee is to cut as may be prescribed by the Minister of Agriculture and Mines.
- (4) The licensee shall be exempt from the payment of royalty on all lumber manufactured in his mill from trees or timber cut elsewhere than on ungranted Crown lands, and not on Crown lands, provided he furnishes to the Minister of Agriculture and Mines, with his returns for royalty, a sworn statement by him or his agent of the quantity of lumber in respect to which he claims such exemption, and verifying the fact that the timber from which the same was manufactured was cut on private property.
- (5) Such license shall not convey any exclusive right to cut over any particular land, but shall merely permit the licensee to cut logs from Crown lands for the purpose of having the same sawn or manufactured in the mill licensed, and such right to cut shall be in common with the public, but he may also purchase logs so cut by any person entitled to cut on Crown lands; and the license shall not convey any right whatever to water power.

- (6) Application for such license shall be made to the Minister of Agriculture and Mines accompanied by a fee of five dollars, and, before the issue of said license, the Minister of Agriculture and Mines shall cause to be published for a period of thirty days, by affixing the same at a Post Office or other public building in the neighborhood of the situation of the mill proposed to be operated under such license, a notice setting forth the fact that such license has been applied for.
- (7) It shall be lawful for the Minister of Agriculture and Mines at any time after the issue of such license to revoke the same upon the application or petition of any persons who shall satisfy him, by any evidence, or in any manner, that the grant of such license, or the operation of such mill, is contrary to the public interest.
- (8) No person, not being a holder of a timber or pulp license shall without obtaining a license as in this Chapter provided, operate a saw mill for the manufacture of timber cut on Crown land, under a penalty not exceeding twenty dollars for every day when such mill is so operated.

3. In estimating board measure, the following equivalents shall be used:

- 6,000 half drum staves shall equal 1,000 ft. board measure.
- 4,500 drum staves shall equal 1,000 ft. board measure.
- 2,000 barrel staves shall equal 1,000 ft. board measure.
- 1,600 tierce staves shall equal 1,000 ft. board measure.
- 1,400 fish cask staves shall equal 1,000 ft. board measure.
- 7,000 laths shall equal 1,000 ft. board measure.
- 10,000 shingles shall equal 1,000 ft. board measure.
- Heading to be estimated in feet, board measure.
- 10,000 tub staves shall equal 1,000 feet board measure.
- A tub shall not exceed 30 lbs.

4. The Governor in Council may, when it shall be made to appear to him to be for the interest of the Colony, by Proclamation to be published in the *Royal Gazette*, prohibit the rinding of growing or standing trees on the public lands of the Colony, or any portion of the same, or lands held under license, lease or grant, for the purpose of taking away the rinds of the said trees for any purpose whatever.

5. The penalty for the infraction of any of the provisions and con-

ditions of this Chapter, where such penalty has not been fixed by any preceding section of this Chapter or by Chapter 129 of these Consolidated Statutes shall be a fine not exceeding ten dollars for each infraction thereof. All penalties under this Chapter may be sued for, in the name of the Minister of Agriculture and Mines, before a Stipendiary Magistrate or Justice of the Peace, by any Timber Inspector or other person authorized by the Minister of Agriculture and Mines.

6. The Governor in Council shall have the right to reserve, by Proclamation published in the *Royal Gazette*, such sections or areas of Crown land as may, from time to time, in the public interest, be deemed expedient, and to prohibit the cutting of timber on such lands for milling purposes, and the penalty for cutting timber on such lands shall be fixed and determined in such proclamation; provided, however, that no such reservation shall be made until public notice has been given to those residing in and near the locality in which the land proposed to be reserved is situated.

7. The words "milling purposes" in the next preceding section, shall be held to mean sawing or otherwise manufacturing at a mill. The penalty for cutting timber on any lands reserved under the provisions of said section shall not be less than twice the value of such timber, when sawn or manufactured, and shall be recovered in a summary manner from the owner of such mill by any person who shall sue for the same.

8. No person shall have any right of property in any timber cut on any Crown lands except under the provisions of a license, duly issued, unless he shall, within eighteen months from the date of cutting, remove such timber to a place of safety under his control.

CHAPTER 135.

Of the Export of Timber.

SECTION

- 1.—Pulpwood may be exported from Labrador; conditions.
- 2.—Export duty thereon.
- 3.—Penalty for unlawful export.
- 4.—Pit props may be exported.
- 5.—Permission to export certain timber already cut.

SECTION

- 6.—Appointment of Timber Exportation Board.
- 7.—Duties of Board to fix price, &c.
- 8.—Customs Officers not to permit export until satisfied that price fixed has been paid.
- 9.—Export duty on pit props.

1. Notwithstanding any provision in the Acts relating to Crown Lands or the cutting or exportation of timber contained, it shall be lawful for the Governor in Council to grant a license to any person to cut pulpwood on any Crown Lands in Labrador and to export the same, and to grant a license to any person, being the holder of a license to cut timber under any Act relating to Crown Lands, to export pulpwood cut on any area in Labrador held under such license; such licenses shall be granted subject to the following conditions:—

- (1) The license shall continue in force for a period of ten years from the fifth day of June A. D. 1915 and no longer.
- (2) The licensee shall pay an export duty on any pulpwood exported of \$1.00 per cord.
- (3) The Governor in Council may prescribe the rate of wages to be paid men employed by the licensee for the purpose of cutting and exporting such pulpwood.

2. The duty of \$1.00 per cord shall be paid at the port of entry at the time when such pulpwood is being exported. No such export shall be permitted until such duty is paid.

3. Any person exporting pulpwood without a license, or without entering the same for export, or without paying the export duty thereon, shall be liable to a penalty for any such offense of \$5,000.00 and an amount equal to double the amount of the duty payable on any pulpwood so exported, to be recovered in a summary manner before a Stipendiary Magistrate.

4. Anything in any Act contained to the contrary notwithstanding, it shall be lawful for any person to export, on the usual export entry, to any place in the United Kingdom or in the Republic of France, any timber or lumber for pit props cut before the 31st day of December, 1917, or before the expiration of six months from the date on which His Majesty shall cause a Proclamation or Proclamations to issue, declaring that a state of war no longer exists between His Majesty and the countries with which hostilities are at present pending, whichever period shall be shorter. Provided that such person shall satisfy the Customs officer to whom he makes application for export entry that such timber or lumber was not cut on any part of that territory or area known as the three mile limit, nor on any territory or area upon which the cutting of timber for such purposes shall under the provisions of any Act have been prohibited by the Governor in Council, or if such timber or lumber was cut on the said area known as the three mile limit, that such timber or lumber was burnt timber when cut.

5. Anything in this Chapter or any other Act to the contrary notwithstanding, it shall be lawful for any person to export, on the usual export entry, to any place in the United Kingdom or in the Republic of France, any timber or lumber for pit props which shall, prior to the fifteenth day of April of the year 1916, have been cut on the said area known as the three mile limit.

6. The Governor in Council shall appoint a Board consisting of five members, who shall serve without pay or reward, and shall meet at such times and places as they deem desirable, of whom a majority shall be a quorum. Such Board shall be known as the "Timber Exportation Board."

7. The duties of the said Board shall be to fix from time to time for different localities in this Colony a minimum price per cord to the cutter, which shall not be less than four dollars and fifty cents per cord for unrinded wood on the bank at tidal water, below which price it shall be unlawful for any person to purchase any timber or lumber for pit props intended to be exported from this Colony. Men employed on wages cutting pit props shall be paid at a rate of not less than thirty dollars per month, with board and lodging: Provided that nothing herein contained shall apply to any timber or lumber for pit props cut prior to the first day of May, 1916.

8. No Customs officer, after notice of the appointment of such

Board, and of the prices fixed by such Board as hereinbefore provided, shall accept any export entry for timber or lumber for pit props without proof to his satisfaction that the price paid for such timber or lumber is not less than the minimum price fixed by such Board for the locality in which such timber or lumber was purchased.

9. A duty of one dollar per cord shall be paid at the port of entry upon all such pit props when the same are being exported and no such export shall be permitted until duty is paid.

CHAPTER 136.

Of Forest Fires.

SECTION

- 1.—Interpretation.
- 2.—Precautions to be observed; penalty for non-observance.
- 3.—Owner of land where fire starts to be liable unless otherwise proved.
- 4.—Liability of camping, &c., parties in neighborhood unless otherwise proved.
- 5.—Persons in charge of parties in the woods to publish provisions of Chapter to his party.
- 6.—Duty to extinguish fires.
- 7.—Rewards to persons extinguishing fires.
- 8.—Locomotives to use means to prevent escape of sparks.
- 9.—Duties of engine drivers and trainmen; precautions to be observed by railway companies; burden of proof, &c.
- 10.—Wood to be cleared from side of railway.

SECTION

- 11.—Saving of rights.
- 12.—Duty of officials to enforce Chapter.
- 13.—Appointment and duties of Chief Woods Ranger.
- 14.—Woods Ranger to report breaches of Game Laws.
- 15.—Investigation on oath of origin of fires.
- 16.—Evidence to be filed.
- 17.—Saw mills, &c., to use spark arrestors.
- 18.—Penalty for defacing posters.
- 19.—Persons entering wooded areas to give name and address on demand.
- 20.—Notices to be erected.
- 21.—Damage by fires to be reported.
- 22.—Rewards for discovery of offenders, &c.
- 23.—Limitation of prosecutions.
- 24.—Penalties to be recovered in summary manner.

1. In this Chapter, unless the context otherwise requires, the expression "woods" includes wood, forest, tract covered by underwood, barren and dry marsh or bog.

2. Every person who—

- (1) Sets out, lights or starts, or causes to be set out, lighted or started, any fire in or near any woods, except for the purpose of clearing land, cooking, obtaining warmth, or for some industrial purpose; or
- (2) Makes or starts, or causes to be made or started, a fire for the purpose of clearing land, without exercising and observing every reasonable care and precaution in the making and starting of such fire and in the managing of and caring for and controlling the same after it has been made and started, in order to prevent the same from spreading and burning up the trees, shrubs or plants surrounding, adjoining, or in the neighborhood of the place where it has been so made and started; or
- (3) Between the fifteenth day of April and the first day of December, makes or starts or causes to be made or started, a fire in or near any woods, or upon any island, for cooking or obtaining warmth, or for any industrial purpose, without observing the following precautions, that is to say:

- (a) Selecting a locality in the neighborhood in which there is the smallest quantity of dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss or vegetable matter of any kind;
 - (b) Clearing the place in which he is about to light the fire by removing all dead wood, branches, brushwood, dry leaves, resinous trees, heath, peat, turf, dry moss and other vegetable matter from the soil within a distance of ten feet from the fire in every direction;
 - (c) Exercising and observing every reasonable care to prevent such fire from spreading, and carefully extinguishing the same before quitting the place; or
- (4) Throws or drops any burning match, ashes of a pipe, lighted cigar, or any other burning substance, or discharges any firearm in the woods, barrens, fields or other place where there is vegetable matter, if he neglects completely to extinguish before leaving the spot, the fire of such match, ashes of a pipe or cigar, wadding of the fire-arm, or other burning substance; or
- (5) Makes, lights or starts, or causes to be made, lighted or started, except for the purposes named in sub-section (1) hereof, a fire on any land not owned or occupied by himself, or does not prevent any fire made, lighted or started on land owned or occupied by him, from extending to land not owned by him,

shall be liable to a penalty of not less than fifty dollars nor more than four hundred dollars for each offence, or to imprisonment for any period not exceeding twelve months.

3. The owner or occupant of the land upon which any fire mentioned in the next preceding section is made or originates shall be deemed and taken to be the person offending, and shall be liable to the several penalties provided by this Chapter, unless such owner or occupant proves to the satisfaction of the Justice, Court or Judge before whom he is tried that such fire was not made, lighted or started by him, nor by any person by his direction or in his employment.

4. When a fire originates on Crown lands and in the neighborhood of any place where it has been ascertained that a person or a number of persons were a short time previously to the happening of such fire camp-

ing, cooking, fishing, or engaged in some industrial occupation, he or they shall be taken to be a party or parties offending against section 2 of this Chapter, and shall be liable to the penalties thereunder, unless he or they shall prove to the satisfaction of the Court or Judge before whom the trial takes place that such fire was not made, started or lighted by him or them or by anyone in his or their company or service, or by his or their direction.

5. (1) Every person in charge of any drive of timber, survey or exploring party, or of any other party requiring camp fires for cooking or other purposes, shall provide himself with a copy of this Chapter, and the same shall post up in some prominent place in each camp, and shall explain to every man employed by him before permitting him to begin work the provisions and penalties embodied therein, and such person in charge as aforesaid shall be responsible that every man employed by him or under his control is fully informed regarding the said provisions hereof. And it shall be incumbent on such person as aforesaid to call his men together and to cause the Chapter to be read in their hearing before any intended operation is begun.

- (2) Every person who neglects or refuses to comply with the provisions of this section shall be liable to a penalty of not less than five dollars, nor more than one hundred dollars.

6. When any woods or barrens are on fire it shall be the duty of the Chief Ranger, Magistrates, Justices of the Peace and constables, and each and every one of them, to order so many of the men living or residing in the neighborhood of the place where such fire is, as they severally deem necessary, to repair to the place where such fire is in progress, and there to assist in extinguishing the same or in stopping its progress, and any such person, so ordered, who refuses or neglect to obey such order shall be liable to a penalty of not less than five dollars nor more than one hundred dollars.

7. In case of any offence against the next preceding section the whole or any part of the penalty recovered shall be applied as a reward to such person or persons, not being guilty of any offence against this Chapter, as the officers mentioned in such section, or a majority of such of them as have witnessed the fire in connection with which the offence was committed, deem best entitled thereto for superior exertions in making known, extinguishing or stopping the progress of such fire; but if no per-

son is deemed entitled under this section for meritorious exertions, then such penalty shall be paid into the Treasury for the use of the Colony.

8. (1) All locomotive engines on any railway which passes through any woods shall, by the company using the same, be provided with and have in use all the most approved and efficient means to prevent the escape of fire from the furnace or ash-pan of such engine, and the smoke-stacks used shall be constructed of the newest and most improved pattern, so as to prevent the escape of fire or burning materials therefrom.
- (2) Every company or person owning or operating any locomotive engine which shall be used in violation of this section shall be liable to a penalty of five hundred dollars for each offence.
9. (1) It shall be the duty of every engine driver in charge of a locomotive engine passing over such railway to see that all such appliances as are in the next preceding section mentioned are properly used and applied, so as to prevent the unnecessary escape of fire from any such engine. Where engineers or conductors or train-men discover that any portion of the railway premises or woodlands adjacent to the railroad are burning or in danger from fire, it shall be their duty to take immediate steps to extinguish such fire and to prevent it from extending from the railway premises to any adjoining woods or premises, and to report the same to the company at the next telegraph station on or in connection with the railway and it shall be the duty of the company to advise the Minister of Agriculture and Mines forthwith of the nature, extent and location of such fire.
- (2) Every engine driver or other railway official, or railway company, who violates the provisions of this section shall be liable to a penalty of not less than ten dollars nor more than two hundred dollars for each offence;
- (3) Every railway company shall make provision for regular places along its line of railway at which places, and at no others, ashes from fire boxes of locomotives may be dumped, and notification of the provision of such places shall be sent to the Governor in Council by the said Company. Any company or engine driver or other railway official who violates

the provisions of this section shall be liable to a penalty for each offence not exceeding twenty-five dollars;

- (4) In any action for a penalty for violation of any of the provisions of sections 8 or 9, and in any action for damages occasioned, or alleged to have been occasioned, by fire from locomotive engines on any railway, said engines shall be presumed not to be provided with the most improved and efficient means used to prevent the escape of fire from the furnace or ash-pan of such engine, and the smoke-stack thereof not to be constructed as required by section 8 hereof, unless and until it is proved by the railway company or engine driver that such engine is so provided and constructed;
- (5) Any company operating locomotives in this Colony shall make arrangements whereby the Government Engineer, the Chief Ranger and Assistant Ranger, and any other person duly authorized by him or them, shall be permitted to board any engine wherever the same may be stopped for any purpose, and to travel on such engine free of charge, and every facility and assistance shall be given to such Engineer, Ranger and any such other person to examine everything in connection with said engine and its operation: Provided that no company shall be compelled to receive on board an engine more than one such person at one time. Should the said Engineer, Ranger or other person discover that the contrivances for arresting sparks or for the prevention of the escape of ashes from the ash-pan of the engine be out of order or defective, or that anything else in connection with the engine is in a condition to endanger in any way property along the railway, it shall be his duty and he is hereby empowered to order the engine to be stopped until such defect be remedied to his satisfaction.

10. Wherever a railway passes through woods the railway company shall clear from off the sides of the railway to a reasonable distance therefrom all combustible material by safe burning or otherwise, and any company violating the provisions of this section shall be liable to a penalty for each offence of one hundred dollars.

11. Nothing in this Chapter contained shall be held to limit or interfere with the right of any person to maintain an action for damages occasioned by fire and such right shall remain and exist as though this

Chapter had not been passed. And in such action for damages proof that the defendant, or any person by his direction or authority or in his employment, or with his consent, express or implied, started such fire in violation of this Chapter, shall be conclusive evidence of negligence on the part of the defendant in starting such fire.

12. It shall be the duty of all Stipendiary Magistrates, Justices of the Peace, Deputy Surveyors and other officers of the Department of Agriculture and Mines, and of all fishery wardens, game wardens and guides, and of the Chief Ranger, and rangers appointed by him to enforce the provisions and requirements of this Chapter, and in all cases coming within the knowledge of any such officers to prosecute every person guilty of a breach of any of the provisions of the same, under a penalty of not less than ten dollars nor more than one hundred dollars for each omission of duty.

13. (1) The Governor in Council may appoint a Chief Woods Ranger, whose duty it shall be to take all suitable measures for carrying into effect the provisions of this Chapter.

(2) The duties of said Chief Woods Ranger shall include the following:

- (a) To periodically travel over all woodlands, whether belonging to the Crown or private owners or under lease from the Crown;
- (b) To appoint when necessary other persons to act as rangers under his direction and in such places as he may direct.
- (c) To institute prosecutions against all persons offending against any of the provisions of this Chapter.
- (d) To trace the origin of every woods fire and fully report the same to the Minister of Agriculture and Mines.
- (e) To placard or cause to be placarded notices containing warnings with reference to woods fires throughout the Colony.
- (f) To perform such other duties as may, from time to time, be required of him by the Minister of Agriculture and Mines.
- (g) To board any engines belonging to any railway being operated in this Colony, and to instruct, when necessary, any

other persons who may be appointed either under sub-section (b) above or who may be specially appointed by him for the purpose, to board any such engines, and to travel upon the same and to examine them both regarding the apparatus with which they are fitted and regarding the manner of their operation, with a view to the proper carrying out of this Chapter and to the prevention of fire generally; and

- (h) To make on or before the thirty-first day of December in each year a full report to the Minister of Agriculture and Mines, setting forth the number of days spent in the performance of his duties, the number of rangers appointed, and in whose employ such rangers are, the number and extent of fires during the year, giving the origin of such fires as far as may be possible, the number of prosecutions instituted by him against offenders, and the results of such prosecutions, and all other necessary data pertaining to the duties of his office.
- (3) Such Chief Woods Ranger, shall be entitled, in addition to his voted salary, for each day employed in patrolling the woods or in the suppression of woods fires, to a sum not exceeding one dollar per day, which shall include travelling expenses;
- (4) Any men appointed as rangers by such Chief Ranger shall be entitled to be paid by the proprietor or proprietors of the property that they are appointed to patrol, when such persons are so appointed at the request or on the application of such proprietors.

14. It shall be the duty of the Chief Ranger, in connection with his duties in relation to the preservation of woods against fires, to be an officer for the enforcement of the Game Laws of the Colony, and he shall institute proceedings for any violation of the provisions of such Game Laws which come under his observation, or are otherwise reported to him; and the rangers appointed by such Chief Ranger shall also be *ex officio* while so employed game wardens.

15. The Chief Ranger under this Chapter shall have power to hold formal investigations as to the origin of fires, and may summon persons to appear before him to give evidence, and shall be authorized to administer an oath to all witnesses examined before him. The form of oath to be administered to any witness shall be as follows:

"You, A. B., do swear that you will make true answers to all questions that may be put to you on this examination. So help you God."

16. The evidence taken before such Chief Ranger and his report in respect to any such investigation shall, at its conclusion, be duly filed with the Magistrate of the District in which such investigation is held, and a copy sent to the Minister of Agriculture and Mines.

17. (1) Where portable mills are used in or within sixty rods of any woods, a competent person shall, during such portions of the year as the same are in operation, be employed by the owners or proprietors to act as fire watchman during such hours of the day or night as the mill is not running, under a penalty of twenty dollars a day for each day that such watchman is not employed.

(2) Every saw mill or other factory manufacturing or burning wood in this Colony shall, if it use a steam boiler, be fitted with a substantial smoke-stack, and such smoke-stack shall be of a height to be designated by the boiler inspector in accordance with the size of the boiler employed. Unless such smoke-stack exceed fifty feet in height from the ground it shall be fitted with a spark arrester, the form of which shall be approved by the boiler inspector, and the same shall be kept in good order and shall be subject to the inspection of the boiler inspector, whose duty it shall be to report all cases where these provisions are neglected or improperly carried out. It shall be the duty of the boiler inspector to draw up regulations regarding the height of smoke-stacks and form of spark arresters as above provided, and to publish such regulations in the *Royal Gazette*.

18. Any person tearing down, defacing or destroying any fire-warning poster shall be liable to a penalty of not less than five dollars nor more than twenty-five dollars for each offence.

19. Every person entering on any timber or pulp area leased from the Crown shall, when requested to do so by the woods ranger, furnish his name, address, proposed duration of his stay, and such other information as the ranger may require.

20. It shall be the duty of the Chief Ranger and of all officials under this Chapter to erect, or cause to be erected, in a conspicuous place

at the side of every highway as they may deem proper, and at suitable distances alongside the rivers and lakes frequented by camping parties, tourists, hunters and fishermen, notices in large letters, to be furnished by the Department of Agriculture and Mines, substantially in the following form:—

“Camp fires must be totally extinguished before breaking camp, under penalty of not to exceed twelve months imprisonment or four hundred dollars fine, as provided by law.

“(Signed),

.....
“*Minister of Agriculture and Mines.*

Such notice shall be furnished to proprietors of timber and pulp areas by the Department of Agriculture and Mines, and shall be posted up at the expense of the said proprietors upon their respective land.

21. The woods rangers, or other officials named in this Chapter, shall report to the Chief Ranger the extent of all woods fires that occur in the district in which they reside, together with the probable amount of property destroyed, specifying the value of timber as near as may be, the amount of cord wood, logs, bark, or other woods product, fences, bridges and buildings that have been burned, the cause of such fires (if it can be ascertained), and the measures employed and found most effective in checking their progress. Forms for the reports required in this Chapter shall be furnished by the Department of Agriculture and Mines.

22. The Governor in Council may, from time to time, authorize the Chief Ranger to offer rewards for information that will lead to the recovery of any of the penalties imposed by this Chapter, and also authorize the payment of compensation to persons called upon to render aid under section 6 of this Chapter. One half of the amount so paid shall be recoverable by the Crown from the owners of the lands on which said fires occur.

23. Every prosecution for any contravention of this Chapter shall be begun within six calendar months immediately following such contravention.

24. All penalties imposed by this Chapter may be sued for and recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace by any person who shall sue for the same.

CHAPTER 137.

Of the Fire Patrol.

SECTION

1.—Governor in Council may arrange with timber owners for joint fire patrol.

SECTION

2.—Powers of members of patrol.

3.—Contribution by the revenue to expenses of such patrol.

1. It shall be lawful for the Governor in Council to enter into an agreement with companies and persons who own lands or are interested in timber areas in this Colony for the purpose of the establishment and maintenance of a Fire Patrol.

2. All persons appointed under or by virtue of such agreement, as members of the fire patrol, shall have all the powers conferred on fire wardens under Chapter 136 of these Consolidated Statutes.

3. It shall be lawful for the Governor in Council to agree to pay and to pay out of the revenues of the Colony, the sum of four thousand dollars annually as a contribution towards the expenses of the said fire patrol.

CHAPTER 138.

Of the Manufacture of Peat.

SECTION

- 1.—Bounty on peat manufactured.
- 2.—No bounty where separate agreement made with company.
- 3.—Period of payment of bounty.

SECTION

- 4.—Evidence of manufacture, &c.
- 5.—Machinery to be admitted free of duty.
- 6.—Governor in Council may employ peat experts.

1. There shall be paid out of the revenues of the Colony to manufacturers of peat fuel the sum of twenty-five cents per ton on every ton of peat fuel manufactured by them in the manner known as "machine manufactured," which has passed into consumption in this Colony or been exported and sold for consumption.

2. No sum shall be payable under this Chapter, in respect of any peat fuel which shall be manufactured by any company under or by virtue of any agreement entered into between such company and the Governor in Council.

3. Such sum of twenty-five cents per ton shall continue to be paid to each manufacturer for a period of ten years from the date of the first sale for consumption of such manufactured peat fuel by such manufacturer: Provided that not more than twenty-five cents per ton shall be paid altogether on any one ton so manufactured.

4. The said sum of twenty-five cents per ton shall be paid to such manufacturer by the Minister of Finance and Customs, upon the production to him of a satisfactory affidavit and such other evidence as the said Minister may deem necessary, setting forth that the whole of such peat fuel, upon which the said payment is requested, has been manufactured in the manner mentioned from peat taken from lands in this Colony, and that the same has passed into consumption in this Colony or by exportation.

5. All machinery necessary for the manufacture of peat fuel shall be admitted into this Colony free of duty.

6. It shall be lawful for the Governor in Council to engage, for such period as he may deem necessary, the services of an expert to examine and report upon the peat and bog areas of the Colony as to their capabilities of supplying commercial articles of fuel, and for other purposes.

TITLE XXII.

OF AGRICULTURE

CHAPTER 139.

Of the Encouragement of Agriculture

SECTION

- 1.—Establishment of model farm.
- 2.—Object of the farm.
- 3.—Powers of Minister of Agriculture and Mines in respect of farm.
- 4.—Duties of superintendent.
- 5.—Publication of bulletins.
- 6.—Powers granted to Minister of Agriculture and Mines.
- 7.—Respecting the Agricultural Board.

SECTION

- 8.—Exemption of Board from Cap. 4 of these Statutes.
- 9.—Expenditure of \$20,000.00 authorized.
- 10.—Proceeds of Sales
- 11.—Nomination and reception of students.
- 12.—Provisions for expenditure of \$20,000.00.
- 13.—Bonus of \$20.00 per acre to be paid for clearing land.
- 14.—Governor in Council may clear land for settlement.
- 15.—Governor in Council may make rules.

1. In order to aid in acquiring and diffusing amongst the people of Newfoundland useful and practical information on subjects connected with agriculture, and to promote scientific investigation and experiment respecting the principles and application of agricultural science, there shall be established, under the direction of the Minister of Agriculture and Mines, a department to be known and designated as an "Agricultural Experimental Station and Model Farm."

2. The objects of the said Experimental Station and Model Farm shall be: to determine the adaptability of grains, grasses, root crops, and all other crops which may grow in this latitude; also the most economical method of producing the best results in growing such crops; to conduct original researches and make experiments on the physiology of plants and animals, the diseases to which they are severally subject, with the remedies for the same; the chemical composition of useful plants at the different stages of their growth; the comparative advantages of rotative cropping as pursued under a varying series of crops; the capacity of new plants or trees for acclimatization; the analysis of soils and water; the chemical composition of manures, natural and artificial, with experiments to test their comparative effects on crops of different kinds; the adaptability of grasses and foliage plants; the composition and digestibility of the different kinds of food for domesticated animals; the scientific and

economic questions involved in the production of butter and cheese; the most modern methods of clearing land, and such other researches and experiments bearing directly on the promotion of agriculture in Newfoundland as may be deemed desirable, having due regard to the varying conditions and needs of the respective districts of the Colony.

3. The Minister of Agriculture and Mines shall have absolute control and supervision of the said Experimental Station and Model Farm. He shall, with the approval of the Governor in Council, appoint a Superintendent and such other officers and employees as may be deemed necessary to carry on successfully the work of the said station and farm. He shall have power to fix salaries and all compensation of employees, and with the approval of the Governor in Council to make rules and regulations in reference to the following matters:

- (1) The admission and instruction of students.
- (2) The management of the station and farm and the duties of the officials.
- (3) The time and manner of the sale of the products of the farm.
- (4) The issuing of bulletins and reports.
- (5) The acquiring, management and distribution of stock.
- (6) Such other matters as may be necessary for carrying out the objects of this Chapter.

4. In order to secure, as far as practicable, uniformity of methods and results of investigations and experiments, it shall be the duty of the Superintendent to furnish forms, as far as practicable, for the tabulation of such results of investigations and experiments; to indicate from time to time such lines of enquiry as to him shall appear most important, and in general to furnish such advice and assistance as will best meet the purposes of this Chapter. It shall be the duty of the said Superintendent, annually, on or before the first day of February, to make to the Minister of Agriculture and Mines, a full and detailed report of the operations, including a statement of receipts and expenditure, a copy of which report shall be laid by the Minister of Agriculture and Mines upon the Table of the House of Assembly within ten days of its opening.

5. Bulletins or reports of progress shall be issued at least once in six months, a copy of which shall be published in two newspapers printed

in St. John's, and furnished to such individuals actually engaged in farming as may require the same. Such bulletins or reports, and the annual report of the said station, shall be transmitted in the mails free of charge for postage, under such regulations as the Postmaster General may from time to time prescribe.

6. Subject to the approval of the Governor in Council, the Minister of Agriculture and Mines shall have power to and he is hereby authorized to arrange for and superintend the formation of Agricultural Societies in all the Electoral Districts of the Colony, and out of any moneys in his hands for agricultural purposes, to grant to any such society an annual sum to aid such society in carrying out its objects, and out of such moneys also to pay to any teacher in any public school in the Colony an annual salary as secretary of any such agricultural society. The Minister of Agriculture and Mines is hereby further authorized to hold agricultural shows in any part of the Colony and out of any money in his hands, as aforesaid, to pay the cost of the same, and to purchase and pay the freight on exhibits for and to pay for prizes to be awarded at such shows. And he is also hereby authorized out of any moneys in his hands, as aforesaid, to pay for all or any of the following services:

- (1) The compilation of agricultural or farm notes for the local press.
- (2) The delivery of lectures on agriculture throughout the Colony.
- (3) The compilation of an agricultural primer for schools.
- (4) The encouragement of cold storage in agricultural localities.
- (5) Salaries of experts giving instructions in the cutting and drying of peat.

It shall also be lawful for the said Minister to provide a scholarship in the schools of the Colony for highest marks in agriculture, subject to such conditions as he may consider proper, and to pay a bonus for the opening and working of limekilns in the Colony, and generally to do, carry on and pay for all such other things, undertakings and services as in the opinion of the Governor in Council are desirable for the encouragement and improvement of agriculture.

7. The Governor in Council shall appoint a Board, consisting of five members, for the purpose of aiding and assisting the Minister of Agriculture and Mines in carrying into effect the provisions of this Chapter. The Board shall be known as "The Newfoundland Agricultural

Board," and the members thereof shall hold office during pleasure. The Minister of Agriculture and Mines, for the time being, shall be the president of the said Board.

8. The provisions of Chapter 4 of these Consolidated Statutes shall not apply to any persons who may be appointed members of the said Board.

9. To enable the Minister of Agriculture and Mines to carry out the provisions of this Chapter, he is hereby authorized to expend annually the sum of twenty thousand dollars in establishing the above described station, and paying the necessary expenses of conducting investigations and experiments, and printing and distributing the results as hereinbefore prescribed; Provided, however, that out of the annual appropriation so received an amount not exceeding five per centum may be expended in the erection, enlargement or repair of buildings necessary for carrying on the work of such station.

10. The proceeds arising from the sale of the products of the said station shall be applied in the liquidation of running expenses.

11. The Experimental Station or Model Farm shall be open to applicants for admission, as follows:—Each electoral district or division of a district in the Colony shall be entitled to send annually, or so often as vacancies may occur, two students, who shall be nominated to the Minister of Agriculture and Mines by the representative or representatives for the said electoral district or division of district, and such students shall be entitled to receive the benefit of a full course of instruction at the said Experimental Station or Model Farm without any charge for tuition or for board or lodging, subject to such rules and regulations as may be established for the government and direction of the said Experimental Station or Model Farm.

12. The Minister of Agriculture and Mines is hereby authorized to expend annually the sum of twenty thousand dollars for the purposes set forth in sections six and seven of this Chapter.

13. There shall be paid to every person who shall clear and cultivate any land in this Colony, under and in compliance with the rules and regulations hereinafter provided, a bonus at a rate not exceeding twenty dollars per acre, for every acre so cleared and cultivated, not exceeding three acres in all to any one person.

14. The Governor in Council shall have power to clear and prepare

for cultivation any of the Crown lands of the Colony for the purpose of promoting or assisting settlement; to provide assistance to *bona fide* settlers by defraying the whole or portion of the expense of their removal into places favorable to the pursuit of agriculture, by the construction of roads and highways, and generally by such means as may seem expedient or desirable; to establish and maintain model or experimental farms; to import or introduce live stock, seeds and plants, for distribution; and to do and perform all such acts as may be thought desirable for the purpose of the encouragement or assistance of the prosecution of the pursuit of agriculture, and for the purpose of the more effectually carrying out the objects and provisions of this Chapter.

15. The Governor in Council shall have power to make rules and regulations, and to alter and amend the same at pleasure, fixing and defining the character of the land to be cleared and cultivated, and the mode, extent, and manner of such clearing and cultivation, regulating the amount to be paid in respect of such land and of land of any particular character and location, and generally prescribing the conditions to be fulfilled in order to entitle any person to the benefit of section 13 of this Chapter, and making all such arrangements and provisions as may seem desirable for the purpose of carrying into effect the objects and provision of such section, which said rules and regulations, or alterations or amendments thereof, when published in the *Royal Gazette*, shall have the force and effect of law as if specifically enacted herein.

CHAPTER 140.

Of the Sale of Seeds.

SECTION

- 1.—Seeds not to be imported without a license.
- 2.—Respecting the grant of licenses.
- 3.—Respecting an Inspector of Seeds.
- 4.—Powers and duties of Inspector.

SECTION

- 5.—Respecting certificate of Inspector.
- 6.—Penalties and forfeiture.
- 7.—Chapter not to apply to seeds imported otherwise than for sale.

1. It shall be unlawful for any person to import for the purpose of sale, any seeds of cereals, grasses, clovers, forage plants, field roots or garden vegetable crops without first obtaining a license for such purpose under the provisions of this Chapter.

2. Licenses may be granted by the Minister of Agriculture and Mines to such persons as shall have received the certificate hereinafter mentioned, entitling the holder thereof to import for sale seeds of all kinds. Such licenses shall be in force for one year from the date thereof and may be issued at any time.

3. The Minister of Agriculture and Mines shall authorize some member of the Board of Agriculture or official of his Department to be the Inspector of Seeds under this Chapter.

4. The duties and powers of such inspector shall be to enquire into the eligibility of applicants for licenses under this Chapter, and to inspect, as far as may be possible, all seeds imported into this Colony, with power to enter any premises where seeds are sold and to take samples of any seeds found therein, and to test or have tested the same. He shall send a report of all seeds tested and found unfit to the Minister of Agriculture and Mines.

5. No license shall be granted to any person except upon the certificate of said inspector, and if the inspector shall report that any person licensed under this Chapter has sold or is offering for sale seeds which in his opinion are unfit for use, the license of such person shall be immediately cancelled, and thereafter shall be invalid. Such cancellation shall be sufficiently effected by a note in writing addressed to the holder of the license by the Minister of Agriculture and Mines.

6. Any of the seeds mentioned in the first section of this Chapter imported for sale by any person except the holder of a valid license for the time being shall be dealt with in all respects as goods the importation of which is prohibited by the Customs and Revenue laws of the Colony and the importer shall be liable to the penalties provided in respect of the importation of prohibited goods.

7. Nothing in this Chapter shall apply to seeds imported by persons for their own use and not for sale, or by agricultural societies for distribution amongst the members thereof, or to any seeds which may be imported for the purpose of being sold for food and not for seeding.

CHAPTER 141.

Of the Encouragement of Sheep Farming.

SECTION

- 1.—Governor in Council may grant sheep-farming licenses.
- 2.—Holder entitled to grant in fee; provisio.
- 3.—Power to remit duties.

SECTION

- 4.—Shepherd's dogs.
- 5.—Bounty.
- 6.—Exception as to mining rights and rights of way.

1. The Governor in Council may grant licenses of occupation upon ungranted Crown lands, which may be deemed suitable for the purpose of sheep-farming, to the extent of three square miles for each license, (such licenses not to exceed ten in number), for a period of ten years, subject to such terms and conditions as the Governor in Council may determine.

2. Any holder of such license having efficiently maintained upon the lands so licensed a flock of at least five hundred sheep for the period of ten consecutive years, shall be entitled to a grant in fee of the land so licensed: Provided that the Governor in Council may allow such licensee three years for preparing and stocking such farm.

3. The Governor in Council may remit the duties payable in respect of agricultural implements imported into this Colony for the purposes of sheep-farming established under this Chapter.

4. All shepherds' dogs or collies, used for the purposes of sheep-farming, shall be exempted from the operation of all laws having reference to dogs in general, and from all penalties, assessments and taxes imposed thereunder.

5. Out of the general revenue of this Colony the sum of four hundred dollars shall be appropriated, subject to the order of the Governor in Council, and paid in equal sums to the first two persons or companies, or to any one of them, who shall actually establish, stock with the afore-said number of sheep and work sheep-farms in this Island, in accordance with the terms of this Chapter, and who shall have satisfied the Governor in Council as to the *bona fides* of their respective claims.

6. No mining or lumbering rights or interests, and no public rights of way shall be held to be included in any licenses or grants issued under this Chapter.

CHAPTER 142.

Of Trespasses by Cattle.

SECTION

1.—Plaintiff, in action for trespass by cattle, to prove sufficient fencing; Proviso;

SECTION

Chapter not to apply in case of contract.
2.—Definition of cattle.

1. In any action, complaint, prosecution, or other proceeding that may hereafter be brought, made, or instituted for or in respect of any damage or injury done or caused by cattle breaking into or trespassing upon land or destroying or damaging the crops or products thereof, the tenant or owner of such land shall not be entitled to recover, nor shall the owner or party in possession of such cattle be liable to pay or forfeit any damages or fine for such damage, nor be liable to any other punishment, unless it shall be proven, upon the trial or hearing of such action, complaint, prosecution, or other proceeding, that the land or property so trespassed upon, or broken into, was enclosed by a good and substantial fence, and that such cattle effected an entry upon such land by breaking down, removing, or leaping over such fence: Provided that this Chapter shall not be construed to affect any existing agreements or covenants relating to boundary fences.

2. "Cattle," in this Chapter, shall be construed to mean cows, bullocks, horses and sheep.

CHAPTER 143.

Of the Keeping of Dogs.

SECTION

- 1.—Dogs to be clogged.
- 2.—Pointers, setters, spaniels and terriers to be licensed
- 3.—Dogs maiming sheep, etc. may be destroyed. Owners may sue.
- 4.—Justices may determine complaints for injury by dogs.
- 5.—Justices may order dogs to be destroyed.
- 6.—Justices may award damages to persons bitten or injured.
- 7.—Owners of sheep, &c., may recover damages.
- 8.—Magistrates to prepare annual statement of sheep killed.
- 9.—Rate payable once a year.
- 10.—Constable may distrain for rate.
- 11.—If no chattels, may destroy dogs.
- 12.—Rate avoided by destroying dog.
- 13.—Duties of constables.
- 14.—Dogs not to be brought from Labrador; penalty.
- 15.—Justice of Peace may order dangerous dog to be destroyed.
- 16.—Magistrates to furnish annual returns of license fees.
- 17.—In St. John's, East and West, dogs not to be kept. Exceptions.

SECTION

- 18.—Licenses.
- 19.—Magistrates to keep register of licenses.
- 20.—Dogs at large may be destroyed.
- 21.—Penalty for keeping dog not licensed.
- 22.—Magistrates to make annual returns of loss to sheep or cattle from dogs.
- 23.—License fund to be applied to compensation for losses from dogs.
- 24.—Appropriation of balance.
- 25.—Dogs under six months old exempt from license.
- 26.—Inhabitants of districts, etc., may petition for prohibition of dogs
- 27.—Petition to be sent to nearest magistrate.
- 28.—Petition to be examined and certified.
- 29.—Magistrate may require proof of signatures.
- 30.—Proclamation prohibiting keeping of dogs to issue.
- 31.—After proclamation keeping of dogs unlawful. Exceptions.
- 32.—Duty of constables.
- 33.—Mail courier may keep dogs.
- 34.—Duration of proclamation.
- 35.—Recovery of fines and penalties. Appropriation.

1. Every dog found at large, without its owner or other person in charge thereof, shall have fastened to its neck a clog, or piece of wood, not less than seven pounds in weight, and not less than eighteen inches in length, with the name of the owner stamped or marked thereon, or shall be effectually muzzled; and every dog so found at large without its owner or other person in charge thereof, and not clogged or muzzled, as aforesaid, may be immediately shot or otherwise destroyed by any constable: Provided that this section shall not apply to pointers, setters, spaniels and terriers licensed by the Magistrates as hereinafter provided: Provided also, that this section shall not apply to areas or districts in which the keeping of dogs is prohibited.

2. No person shall have in his possession any pointer or setter, spaniel or terrier dog, without obtaining a written license from a Stipendiary Magistrate, under a penalty not exceeding twenty dollars, such license to be given only after an inspection of such dog by the said Magistrate. Every dog so licensed shall wear a collar with the owner's name in full thereon, and such owner shall pay for every license for a pointer or

setter the sum of two dollars per annum, and for every spaniel or terrier a free license may be granted.

3. Every licensed or unlicensed dog discovered killing, maiming or worrying sheep, lambs, horses, goats, cattle of any description, or poultry, may be immediately shot or otherwise destroyed by the owner of such sheep, lambs, horses, goats, or cattle, or poultry, or by any person witness of such killing, maiming or worrying.

4. If any licensed or unlicensed dog shall kill, maim, or injure any sheep, lamb, horse, goat, cattle of any description, or poultry, any Justice shall, upon complaint made by the owner thereof, or by any person in his behalf issue his warrant against the owner of such dog to appear before him on a certain day; and such Justice may proceed to hear the said cause or complaint, and, if he shall see fit, give judgment therein for the value of each and every sheep, lamb, horse, goat, cattle of any description, or poultry, so killed, maimed, or injured, with costs, and enforce the payment of such judgment by execution or distress on the goods and chattels of the defendant and should no goods or chattels of the defendant where-with to satisfy such judgment and costs be found, the said Justice may commit such defendant to gaol for any period not exceeding thirty days.

5. The said Justice shall, upon hearing the said complaint, besides such judgment, make his order in writing that the dog so killing, maiming or injuring as aforesaid, be forthwith destroyed.

6. If any licensed or unlicensed dog shall bite or otherwise injure any person, such person may proceed before any Justice and recover damages for the injury in the mode prescribed by the fourth section of this Chapter, and such Justice may make an order for the destruction of such dog, or such person may proceed by an action in any Court of competent jurisdiction; and it shall not be necessary in such action for such person to aver or prove that the defendant had knowledge of the mischievous propensities or habits of the said dog.

7. Nothing herein contained shall prevent the owner of any sheep, lambs, horses, goats, cattle of any description or poultry from proceeding by action in any Court of competent jurisdiction to recover the value of any such sheep, lambs, horses, goats, cattle or poultry, or any special damage arising to such owner from the killing, maiming or injuring of such sheep, lambs, horses, goats, cattle or poultry; and it shall not be necessary in such action for the plaintiff to aver or prove that the defendant had knowledge of the mischievous propensities or habits of the said dog.

8. The Stipendiary Magistrates of the several districts are hereby required once in each year to prepare a statement, from information furnished on the oaths of the owners of all sheep, lambs, horses, goats, cattle and poultry destroyed in their respective districts by dogs, of the number and value of such sheep, lambs, horses, goats, cattle and poultry and the names of the respective owners; and the said Magistrates, upon consideration of the said statement, shall order a rate to be levied on the owners of dogs not exceeding one dollar for each dog owned by any person residing within such distance from the place where any such sheep, lambs, horses, goats, cattle or poultry may have been destroyed by dogs in the course of the year then preceding; as the Magistrates may determine; such rate together with the fees for licenses under section two, to be appropriated towards indemnifying the owners of such lambs, horses, goats, cattle or poultry so destroyed for the loss they may have sustained and for all incidental expenses, in the event of such owners being unable to obtain such indemnity from the owner of the dogs doing the damage. Provided that the owner of any dog for and in respect of which the license fee mentioned in the second section may have been paid, shall not be subject to the rate mentioned in this section.

9. The said rate shall be payable only once in each year, at such times as may be stated in orders to be made in pursuance of the foregoing section; and it shall, if necessary, be recovered by warrant of distress, to be issued by the Magistrate making such orders.

10. Any constable to whom a warrant, issued under the preceding section, may be directed, shall demand and collect the said rate from all owners of dogs within the limits prescribed in such warrant; and in the event of non-payment within fourteen days from the first demand, the constable holding such warrant may recover the amount of such rate and all expenses from the owners of such dogs by distress of the goods and chattels of such owners, and a sale thereof within five days from the time of such distraint.

11. Any constable holding a warrant, issued under this Chapter, and not being able to find goods or chattels of the person against whom such warrant may be directed sufficient to satisfy the exigencies thereof, may forthwith destroy or cause to be destroyed any dog owned by such person and in respect of which such warrant may have been issued.

12. Any person upon whom any rate may be levied, in pursuance of this Chapter, may, at any time previously to the sale prescribed by the

tenth section, relieve himself of all liability for and in respect of such rate, by destroying or causing to be destroyed, or delivering up to any constable for the purpose of being destroyed, any dog owned by such person and in respect of which such rate may have been levied.

13. The police constables in the several districts shall carry out the provisions of this Chapter by the destruction of all dogs found at large and not clogged, muzzled, or licensed; and any constable refusing or neglecting to destroy such dogs shall for the first offence be subject to a fine of four dollars, and for a second or subsequent offence shall be subject to a fine not exceeding twenty dollars.

14. No dogs shall be brought into any of the electoral districts of this Colony from Labrador, or from the electoral districts of St. George's or St. Barbe into any other electoral district. Any dogs brought from any of such places into any other electoral district shall be forthwith destroyed; and any person having or keeping any such dog in his possession, shall be subject to a penalty of twenty dollars for every such dog.

15. Any Justice of the Peace shall, upon complaint, cause any mischievous or dangerous dog to be destroyed.

16. Every Magistrate shall, once in each year, furnish to the Minister of Finance and Customs an account of all licenses, fees and rates received by him, and of the disposal thereof, and shall pay over to the Minister of Finance and Customs any license fees not applied by him to the purposes of this Chapter.

PROVISIONS RELATING TO THE ELECTORAL DISTRICTS OF ST. JOHN'S
EAST AND WEST.

17. It shall be unlawful for any person within the limits of the electoral districts of St. John's East and West, to have in his possession or on his premises any dog except as hereinafter provided.

18. Any person may obtain from a Stipendiary Magistrate a license to keep a dog or dogs within the said electoral districts, upon payment of a fee of three dollars for pointers or setters, and one dollar for spaniels, terriers and other dogs; and a license fee of five dollars for all bitches. The license when granted shall be in force for twelve months from the date of the issue thereof, and may be renewed from year to year upon payment of the above fees.

All moneys received by the Magistrate or the Clerk of the Peace for the Central District on account of license fees under this section shall be paid into the Treasury, and all claims for compensation under this Chapter which shall be proven to the satisfaction of the Magistrate shall be paid at the Treasury, and any balance of said fees remaining shall be applied as in this Chapter provided.

19. Stipendiary Magistrates shall keep a register, in which shall be entered the name of every licensee, the date of the issue of the license, and the description of the dog licensed.

20. It shall be the duty of police constables, and it shall be lawful for any other person, to kill any dog found at large and not within charge, call or control of any owner or other person within the limits of the aforesaid electoral districts.

21. Any person having in possession any dog not licensed as aforesaid shall be liable to a penalty not exceeding twenty dollars.

22. It shall be the duty of the Magistrates for the Central District, on or before the thirty-first day of December in each year, to make returns to the Colonial Secretary of all damage and loss to sheep or cattle caused by dogs within the said electoral districts which shall have been judicially proved before them, with the names of the persons who have sustained such damage and loss, and the amount of damage and less which such persons have respectively sustained.

23. On and after the first day of February in each year the fund arising from the issue of dog licenses under section 18 of this Chapter shall be divided proportionally among such persons as may have sustained loss or damage to sheep or cattle by dogs within the districts of St. John's East and St. John's West during the preceding year, ending 31st day of December, where such persons have not been otherwise compensated for such loss or damage: Provided that such persons shall have given notice of such loss or damage before said first day of February, and provided that proof of such loss or damage be made to the satisfaction of the Stipendiary Magistrates of the central district: Provided also that no person shall receive a larger sum than the loss he may prove that he has sustained.

24. After providing for the compensation aforesaid, the balance of said fund, if any, shall be handed over by the Clerk of the Peace for the Central District to the Minister of Finance and Customs, and shall be

applied by the Governor in Council to public works or improvements in the said districts of St. John's East and St. John's West.

25. No penalty shall attach in respect to the keeping of any dog under six months old without a license, but dogs under that age shall not be permitted to go at large.

PROVISIONS RELATING TO THE PROHIBITION OF THE KEEPING OF
DOGS WITHIN CERTAIN AREAS.

26. It shall be lawful for the duly qualified electors, resident within any area or district within this Colony, to present to the Governor in Council a petition in the form prescribed by the schedule to this Chapter, or as near thereto as may be, setting forth the limits or boundaries within which such area or district is comprised, and the names of the towns, harbors or settlements included therein, and praying for a proclamation prohibiting the keeping of dogs within such area or district.

27. Such petition shall be sent to the nearest resident Stipendiary Magistrate, and shall be by him (after examination and certificate as hereafter provided) forwarded to the Governor in Council.

28. If, upon due scrutiny of such petition, the Stipendiary Magistrate shall find that the same contains the *bona fide* signatures of a majority of the duly qualified electors resident within the limits or boundaries set forth in the said petition, he shall forthwith make a certificate to that effect, endorsed upon or attached to the petition, and shall forward the same to the Governor in Council.

29. Any Stipendiary Magistrate to whom such petition shall be presented may, before certifying the same to the Governor in Council as aforesaid, require proof to be made before him of the *bona fide* signature of any of the names subscribed to such petition upon the oath of either the party whose name purports to be signed or of a witness to such signature.

30. Upon receipt of such petition containing the signatures of a majority of the electors resident within any such area or district certified as aforesaid, the Governor in Council shall issue a proclamation or public notice prohibiting the keeping of dogs within such area or district.

31. From and after the date prescribed in and by such proclamation or notice, it shall not be lawful for any person resident within such area or district to keep, or to have in his possession, or under his control, any dog within the area or district to which such proclamation or notice shall relate, under a penalty not exceeding fifty dollars or imprisonment

for a term not exceeding three months. This prohibition shall not apply to any person or persons travelling or passing through such areas or districts and having a dog or dogs, licensed under this Chapter, in his or their possession, charge or control, and not at large.

32. It shall be the duty of all police constables to kill all dogs found by them in any area or district in which the keeping of dogs is prohibited under the next preceding section of this Chapter, except shepherd dogs or collies and those excepted under this Chapter, and all such dogs not so excepted may be killed by any person whomsoever; and it shall be lawful for any person to destroy any dog kept in contravention of the provisions of the said section.

33. Notwithstanding any provision in this Chapter, it shall be lawful for the Postmaster General to grant a permit in writing to any mail courier to keep in his possession or under his control in any place in this Colony such a number of dogs as the Postmaster General may consider necessary for the transport of mails, and as shall be named in such permit, and any mail courier who obtains such permit may keep in his possession or under his control the number of dogs in said permit named; and Sections 31 and 32 of this Chapter shall not apply to any dogs kept by mail couriers by permit under the provisions of this section.

34. After such proclamation or notice shall have been issued as aforesaid, no new petition on the same subject shall be presented from such area or district until the expiration of ten years from the date of such proclamation or notice; and if no such petition be presented within three months after the expiration of such proclamation or notice, the operation of such proclamation or notice with reference to any such area or district shall be considered as agreed to by the electors of such area or district, and shall continue without the necessity for the issue of a new proclamation for ten years from the expiry thereof, and so on in like manner shall be continued in operation and effect for every successive period of ten years without the necessity of the issuing of a new proclamation until a petition is presented in the manner hereinafter provided.

PENALTIES.

35. All fines and penalties under this Chapter may be sued for and recovered in a summary manner before a Stipendiary Magistrate or a Justice of the Peace, and all fines shall be paid to the person who shall give information of the offence and prosecute the offender to conviction.

CHAPTER 144.

Of Preventing the Introduction and Spread of Insects
Destructive to Crops.

SECTION

- 1.—Governor in Council may make orders to prevent introduction of Colorado beetle; and prohibit landing of potatoes, &c.; and direct destruction of articles; violation of order; forfeiture; penalty.
- 2.—Governor in Council may make orders to prevent the spreading of Colorado beetle;

SECTION

- and direct the destruction of articles; and entry on lands for purposes of chapter; and may prohibit keeping specimens; violation of order; penalty
- 3.—Orders to be gazetted.
- 4.—Recovery of penalties; imprisonment.

1. The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the introduction into this Colony and its Dependencies, of the insect designated as *Doryphora Decemlineata* or *Chrysomela Decemlineata*, and commonly called the Colorado Beetle. Any such order, if the Governor in Council shall think fit, may prohibit or regulate the landing in this Colony of potatoes, or of the stalks or leaves of potatoes, or other vegetable substance, or other article the landing whereof may appear to the Governor in Council likely to introduce the said insect into this Colony, and may direct or authorize the destruction of any article if landed. If any person lands, or attempts to land, any article in contravention of any order under this Chapter, such article shall be liable to be forfeited in like manner as goods, the importation whereof is prohibited by the Acts relating to the Customs, are liable to be forfeited; and the person so offending shall be liable to a penalty not exceeding one hundred dollars.

2. The Governor in Council may, from time to time, make such orders as may be deemed expedient for preventing the spreading in this Colony of the said insect. Any such order may, if the Governor in Council shall think fit, direct or authorize the removal or destruction of any crop of potatoes, or other crop or substance on which the said insect, in any stage of existence, is found, or to or by means of which the said insect may appear to the Governor in Council likely to spread, and the entering on any lands for the purpose of such removal or destruction, or for the purpose of any examination or enquiry authorized by such order, or for any other purpose of the order. Any such order may, if the Governor in Council think fit, prohibit the keeping, selling, or exposing or offering for sale, or the keeping of living specimens of the said insect in any stage of ex-

istence, or the distribution in any manner of such specimens. Any person committing any offence against or acting in contravention of such order, shall incur a penalty not exceeding one hundred dollars.

3. Every order made under this Chapter shall be published in the *Royal Gazette*.

4. Penalties imposed by this Chapter may be recovered in a summary manner, with costs, before a Stipendiary Magistrate, and by distress and sale of the offender's goods and chattels; in default of payment of such penalties and costs, the offender may be committed to prison for a period not exceeding three months.

CHAPTER 145.

Of the Prevention of Cattle Disease.

SECTION

1.—Governor-in-Council to make rules to prevent introduction of cattle disease.

SECTION

2.—Governor-in-Council may issue orders, &c.
3.—Penalty on violation of orders.

1. The Governor in Council may make rules and regulations for preventing the introduction or spreading of any contagious or infectious disease among horses, cattle, pigs and sheep in this Colony, such rules to be promulgated and published in the *Royal Gazette*.

2. The Governor in Council may issue orders to the Minister of Finance and Customs, or other proper officer of His Majesty's Customs, to prevent the landing, in any port or place in this Colony, of horses, cattle, pigs or sheep having any contagious or infectious disease, and to order the immediate removal, and, if necessary, the destruction of the same.

3. Any person who shall infringe or violate any rule or order made by the Governor in Council in pursuance of this Chapter shall forfeit and pay, for each offence, a sum not exceeding one hundred dollars, to be recovered in a summary manner before any Stipendiary Magistrate, upon the oath of one or more witnesses, and in default of payment such offender may be imprisoned for any term not exceeding three months.

CHAPTER 146.

Of Potato Canker.

SECTION

- 1.—Interpretation.
- 2.—Power to make regulations.
- 3.—Scope of regulations.

SECTION

- 4.—Power to enter premises.
- 5.—Respecting removal of potatoes.
- 6.—Penalty section.
- 7.—Publication of regulations.

1. In this Chapter the expression “the Minister” shall mean the Minister of Agriculture and Mines.

2. The Governor in Council may make such regulations as may be deemed necessary to stamp out and prevent the spread, in the Colony, of the disease known as Potato Canker, and may prohibit the introduction into the Colony of any potatoes affected by said disease.

3. Such regulations may provide—

- (1) For the prohibition of the import generally, or from any particular country or place known to be infected with Potato Canker, of potatoes for any purpose whatever;
- (2) The terms and conditions upon and the ports of entry at which potatoes may be introduced into the Colony of Newfoundland;
- (3) For the treatment and method of treatment to be given to any potatoes, or premises, in order to prevent the spreading of Potato Canker, and may prescribe whether such treatment shall be given by the owner, or by a person or persons appointed for such purpose;
- (4) For the destruction of any potato crop infected or suspected of being infected with Potato Canker.
- (5) For the granting of compensation for any potatoes or containers thereof so destroyed; such compensation not to exceed two-thirds of the value of potatoes destroyed and to be granted only by the Governor in Council upon the recommendation of the Minister.

- (6) For the prohibition of the sale of any potatoes infected with Potato Canker;
- (7) That the occupier of the premises on which is discovered Potato Canker shall forthwith notify the Minister and shall also send specimens of affected potatoes;
- (8) For the confiscation of any potatoes or containers thereof, if any, in respect to which a breach of this Chapter, or any regulation thereunder, is committed, and generally for any other purpose which may be deemed expedient for carrying out this Chapter, whether such regulations are of the kind enumerated in this section or not.

4. Any person duly authorized by the Minister may enter any place or premises in which he has reason to believe there exists Potato Canker, and may take specimens of potatoes therefrom.

5. The Minister, upon a representation to him of the existence of Potato Canker in any place in the Colony, may prohibit the removal from such place or the movement therein of any potatoes which, in his opinion, are likely to result in the spread of said disease.

6. Every person who contravenes any provision of this Chapter or any regulations made hereunder shall be liable, upon summary conviction, to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding six months, or to both fine and imprisonment. Any potatoes imported or brought into the Colony contrary to this Chapter or to any regulation made hereunder, shall be forfeited to the Crown.

7. Every order and regulation made under this Chapter shall be published in the *Royal Gazette* and shall be laid by the Minister before the Legislature within fifteen days after the commencement of the next session.

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TITLE XXIII.

OF GAME

CHAPTER 147.

Of the Preservation of Deer

SECTION

- 1.—Short title.
- 2.—Interpretation.
- 3.—Close seasons.
- 4.—Limit on number of deer to be killed.
- 5.—Reserved areas.
- 6.—Penalties and procedure.
- 7.—Persons not domiciled in Colony not to kill without license
- 8.—Licenses to be issued
- 9.—Records to be kept.
- 10.—Conditions of licenses.
- 11.—Licenses to guides.
- 12.—Non-licensed persons not to be employed.
- 13.—Oath to be taken by licensees.
- 14.—No killing beyond number.
- 15.—Licenses to be returned with affidavit as to number killed.
- 16.—Export of heads, horns, etc., forbidden, save as herein provided.
- 17.—Penalty on crew of exporting vessel.
- 18.—Animals killed under license may be exported.

SECTION

- 19.—Not more than three to be so exported.
- 20.—Special permits may be issued.
- 21.—Duty of Customs' Officers to seize carcasses, etc., unlawfully exported.
- 22.—Caribou not to be snared or trapped; penalty.
- 23.—Methods of hunting prohibited.
- 24.—Export of live caribou may be authorized.
- 25.—Flesh of caribou not to be canned, &c.
- 26.—Such flesh may be seized
- 27.—Sale forbidden at certain periods, &c.; penalty.
- 28.—Authority to administer oaths.
- 29.—Penalty for false oaths.
- 30.—Person convicted of violation of license, may never receive another license.
- 31.—Search warrants.
- 32.—Distribution of meat, &c., confiscated.
- 33.—Allocation of fees.
- 34.—Disposition of fines, &c.
- 35.—Penalty where no other provided.
- 36.—Right of appeal.
- 37.—Magistrate may dismiss proceeding where caribou *bona fide* required for food.

1. This Chapter may be cited as "The Preservation of Deer Act."

2. In this Chapter "domicile" shall mean a *bona fide* residence in this Colony for a period of not less than two years; "close season" shall mean the time in any year within which the hunting, taking or killing of caribou is by this Chapter prohibited; and "season" shall mean the time within which such hunting, taking and killing is by this Chapter allowed.

3. No person shall hunt, kill, or pursue with intent to kill, any caribou from the first day of February to the thirty-first day of July in any year, both days inclusive, or from the first day of October to the twentieth day of October in any year, both days inclusive.

4. No person other than a licensee under this Chapter shall, during the time by this Chapter allowed for killing caribou, kill or take more than two stag and one doe caribou in any one year.

5. The Governor in Council, upon the recommendation of the Minister of Marine and Fisheries, may define the boundaries of a tract or section of land in this Colony along the line of railway from Goose Brook to Grand Lake, and extending five miles on both sides of the said line of railway, and shall publish such definition of boundaries in the *Royal Gazette* and one other newspaper published in this Colony, and from and after such publication it shall be unlawful for any person to hunt, kill, or pursue with intent to kill, any caribou at any place within the boundaries so defined.

6. The sale or possession of any part of the carcass of a caribou between the first day of March and the first day of July in any year, both days inclusive, shall be *prima facie* evidence of a violation of section 3 of this Chapter, and the seller or possessor thereof shall be liable to a penalty not exceeding two hundred dollars and in default of payment to imprisonment for any period not exceeding three months, unless he prove to the satisfaction of a Stipendiary Magistrate or Justice of the Peace before whom complaint is made, that the caribou was killed within a period when such killing was lawful.

7. No person not actually domiciled in this Colony, shall hunt, kill, or pursue with intent to kill, in any season, any caribou, without having first procured a license for the season; nor shall more than one license be granted in any one year to any one person.

8. Licenses to hunt, kill, or pursue with intent to kill caribou shall only be issued by a Stipendiary Magistrate, a Justice of the Peace, or the Minister or Deputy Minister of Marine and Fisheries. A fee of one dollar for each license shall be paid to any of the above persons issuing same, which fee such person may retain to his own use.

9. Blank licenses shall be prepared and issued by the Department of Marine and Fisheries in the form of Schedule A hereto, to Magistrates and Justices, and an account of the blank licenses so issued shall be kept by the Department. Once in three months it shall be the duty of any person to whom such blank licenses are issued, to account for the same to the Department of Marine and Fisheries, and all such persons shall return the blank licenses in their possession on or before the first day of February in each year, and with them a statement of—

- (1) the number of licenses issued during the previous three months by the person making the return;
- (2) the names of licensees;

- (3) the amount of fees collected;
- (4) the number of complaints made for a breach of this Chapter.
- (5) the names of complainant and accused, and the manner in which each complaint has been disposed of; and
- (6) such other information as may be deemed necessary for the due and efficient carrying out of the provisions of this Chapter.

10. Any person not domiciled in this Colony shall be entitled to hunt, kill, and pursue with intent to kill, caribou, as hereinafter provided, on taking out a license, for which a fee of fifty dollars shall be paid, and such license shall entitle the holder thereof to kill not more than three stag caribou. Licenses may be issued to officers of His Majesty's ships of war employed on this station for the fisheries protection, without payment of any fee whatsoever, upon application to the Minister of Marine and Fisheries. Such last-mentioned licenses shall hold good for a period of six weeks from the date of issuing thereof, but shall not confer any right to hunt, kill, or pursue with intent to kill, caribou during the close season. The provisions of the two next succeeding sections shall not apply to any person employed by the holder of any such license, last above mentioned, in any capacity on a hunting expedition, who may be *bona fide* rated on any commission of any of His Majesty's ships aforesaid.

11. Licenses shall be issued to all guides in the form of Schedules B and C to this Chapter by any of the persons named in section 8, but the fee of one dollar in the said section mentioned shall not be charged. Every non-domiciled guide shall pay for such license a fee of fifty dollars. Every applicant for such license shall make oath or affirmation that he will use his best endeavors to have the provisions of this Chapter carried out, and that whenever any breach thereof may occur he shall forthwith report the same to the nearest Magistrate, Justice of the Peace or Warden, with a view of prosecuting the offender to conviction.

12. No person holding a license to hunt, kill, or pursue caribou, shall employ as a guide, labourer or bearer, valet or personal servant, in a hunting expedition any person who has not obtained a license under the next preceding section.

13. Any person obtaining a license to hunt, kill or pursue caribou, shall make oath or affirmation before the person granting the said license, that he will not violate or permit the violation of any portion of this

Chapter, and that he will endeavour *bona fide* to remove the carcass or flesh of any caribou which he may kill and which may not be intended to be used as food while hunting, and have such carcass or flesh brought in to some town or settlement within ten days after such caribou shall have been killed.

14. No person holding a license to hunt, kill or pursue caribou, shall kill or take more caribou than the number indicated by his license, and no member of a hunting expedition, whether a guide, labourer or bearer, or otherwise in the employ of the holder of such license, shall kill any caribou other than under the said license, and as part of a number indicated therein.

15. It shall be the duty of the holder of a license to hunt, kill or pursue caribou, to return his license at the expiration thereof to the Magistrate or other person authorized to issue the same with a statement thereon, in writing, specifying the number of caribou killed by him and his party under the said license, and he shall make oath or affirmation before a person entitled to issue licenses that the statement on said license is true, and that he and his party have to the best of his knowledge and belief complied with the provisions of this Chapter in every respect. The person to whom the said license is returned shall thereupon forward the same with the statement aforesaid to the Department of Marine and Fisheries.

16. Save as provided in this Chapter no person shall export the antlers, head, or skin of any caribou; nor shall the owner, master, officers or crew of any vessel permit the exportation therein of any such antlers, head or skin, or any part thereof, save as provided and under a permit of a Customs' officer.

17. If any master, owner, officer or any one of the crew of any vessel shall be convicted of a violation of the last preceding section, he shall, upon such conviction, be liable for every such offence to a penalty of five hundred dollars or six months imprisonment, and such penalty shall constitute a claim against the said vessel and become a lien thereon and may be collected and enforced by the seizure, confiscation and sale of the said vessel despite any change of registry or ownership between the date of the offence and the seizure of the vessel.

18. Any person holding a license to hunt, kill or pursue caribou, under this Chapter, may export the carcasses, antlers, head or any part of any caribou killed under the said license, upon entering the same at the

Customs House for exportation and receiving a permit therefor. Such person shall make oath or affirmation, specifying the articles which he intends to export, and that the same are portions of caribou killed under license held by him, and stating the name of the person from whom he obtained the said license, and the date thereof, and that the articles about to be exported are not being exported as articles of commerce, and he shall thereupon pay a fee of fifty cents to the officer of customs before whom such export entry is made, which fee the said officer is hereby authorized to retain. Such affidavit or affirmation shall be forwarded to the Department of Marine and Fisheries.

19. No person holding a license to hunt, kill or pursue caribou under this Chapter shall export from this Colony the carcasses, heads, or antlers, of more than three stag caribou.

20. Any person not holding a license to hunt, kill or pursue caribou, but who is domiciled in this Colony, may export the antlers, heads or skins of caribou upon entering the same for exportation at a customs' house in the Colony and receiving a special permit therefor. Such permit shall not be granted except upon an affidavit made before the Customs' officer to whom application for a permit is made, stating the name of the owner-of the articles to be exported, their destination, and the person from whom and place where they were obtained, and that the same are not being exported as an article of commerce. Such affidavit shall be transmitted by the officer of Customs to the Department of Marine and Fisheries.

21. If any Customs officer is informed or becomes aware that any antlers, heads or skins of caribou are being exported except by a person who has complied with the provisions of this Chapter in all respects, it shall be the duty of such officer to seize the said antlers, heads or skins, or any portion thereof, and to make complaint before a Stipendiary Magistrate or Justice of the Peace that a violation of this Chapter has been committed.

22. No person unless authorized under section 24 of this Chapter, shall set or attempt to set any snare or trap, or pit, for the destruction or capture of caribou, under a penalty of not less than twenty-five, nor more than fifty dollars for each offence, and the finder of any such snare or trap may destroy the same. The possession of any such snare or trap shall be presumptive evidence of the attempt of the person in whose possession it is found, to set the same for the destruction of caribou.

23. Any person who shall hereafter hunt, chase, kill, or pursue with intent to kill, any caribou:

- (1) With dogs; or,
- (2) With hatchet, tomahawk, spear, machine, contrivance or weapon, other than fire-arms loaded with ball or bullet; or,
- (3) While swimming or crossing any pond, lake, stream, river or water-course;

shall be liable to a fine not exceeding one hundred dollars, in addition to any other penalties to which he may be otherwise liable under this Chapter to be recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace by any person who shall persecute the offender to conviction.

24. It shall be lawful for the Minister of Marine and Fisheries to authorize the capture and exportation of caribou alive by any means, for the purpose of domestication, and the killing of any caribou, and exportation of the same, or any part thereof for the purpose of sale and of exchange to and with game societies or to museums, societies, or institutions in other countries, despite any section of this Chapter forbidding the exportation thereof, and the Minister of Marine and Fisheries may expend any portion of the fund derived hereunder from licenses in purchasing game birds, or eggs of game birds, or moose, or elk, or other wild animals, for the purpose of increasing and improving game.

25. Any person who shall put up the flesh of caribou in cans or tins or other packages shall be liable to a penalty not exceeding two hundred dollars, or, in default thereof, to imprisonment for any period not exceeding three months.

26. Any flesh of caribou found put up in cans, tins or other packages may be seized, and may be destroyed by the order of a Justice of the Peace.

27. It shall not be lawful for any person to purchase, or to receive in exchange, from any other person any venison or any portion of the flesh of caribou, at any time between the first day of January and the thirty-first day of July in any year, and any person offending against the provisions of this section shall be liable to a penalty not exceeding two hundred dollars or in default to imprisonment for any period not exceeding three months.

28. Any person before whom by this Chapter an oath or affirmation shall or may be taken, is hereby authorized to administer the same.

29. Any person knowingly or wilfully making a false oath or false affirmation under this Chapter, shall in addition to any other penalty to which he may be subject under this Chapter, be deemed guilty of wilful and corrupt perjury.

30. Any person who shall be convicted of any violation of the provisions of this Chapter, shall thereafter be incapable of receiving a license hereunder.

31. Whenever any person shall make affidavit in the form of Schedule D hereto before a Stipendiary Magistrate or before a Justice of the Peace, that he has reason to suspect and does suspect that any portion of the carcass of a caribou killed during any close season is concealed on the premises of any person, it shall be lawful for such Stipendiary Magistrate or Justice of the Peace to cause a search warrant to be issued in the form of Schedule E hereto authorizing the person to whom it is addressed to search such suspected premises, and seize and take any such portion of the carcass of a caribou found therein before such Stipendiary Magistrate or Justice, to be dealt with according to law, and the said Magistrate or Justice shall have power to confiscate the same.

32. It shall be the duty of the Magistrate or Justice, before whom a prosecution takes place, to send all caribou meat, when seized and confiscated under the provisions of this Chapter, to the Commissioner of the Poor or the Relieving Officer for the poor or to distribute the said meat amongst the poor if no Commissioner of the Poor or Relieving Officer reside within ten miles; the carcass, horns and head, when confiscated, shall be sold by the Magistrate or Justice, and the proceeds shall be paid to the Minister of Marine and Fisheries for the use of the Colony.

33. All fees when collected under this Chapter shall (unless otherwise provided) be remitted forthwith to the Minister of Marine and Fisheries, who shall place the same to the credit of a special account, and shall from such account pay for the services of wardens and other expenses in connection with the enforcement of this Chapter and the preservation and importation for propagation of game animals and birds, and the balance thereof he shall, at the termination of each financial year, pay over to the Minister of Finance and Customs for the general revenue of the Colony.

34. All fines and penalties under this Chapter, except where otherwise provided, shall be sued for and recovered in a summary manner on information or complaint before a Justice of the Peace by any person who shall inform and sue for the same; and one-half of all fines, penalties and forfeitures imposed under this Chapter, except as aforesaid, shall be awarded and paid to such complainant who shall prosecute the offender to conviction, in addition to all costs and expenses consequent upon such information or complaint and prosecution, and the said Justice of the Peace shall have power to award the same, and the other part shall be paid to the Department of Marine and Fisheries for the purposes of this Chapter.

35. Any person who shall violate any section of this Chapter for which no penalty is herein provided shall be liable to a fine not exceeding two hundred dollars, and in default of payment to imprisonment for any period not exceeding six months.

36. If a fine of fifty dollars or upwards, or a term of imprisonment of one month or more, is imposed for a violation of this Chapter, the person convicted may within one week after judgment, upon giving security satisfactory to the convicting Magistrate or Justice, appeal to the Supreme Court.

37. If upon the trial of any person charged with a violation of the third section of this Chapter, the Magistrate or Justice trying the case is satisfied that such person actually needed any caribou killed by him as food for himself and family, he may dismiss the proceeding: Provided that any decision of the Magistrate or Justice under this section shall not form a ground of appeal under this Chapter.

SCHEDULE A.

Form of License to Hunt, Kill and Pursue Caribou.

THE PRESERVATION OF DEER ACT.

According to the provisions of "The Preservation of Deer Act" permission is hereby given to of to kill stag caribou in Newfoundland during the season from the day until the day of in the year, both days inclusive, he having paid the license fee of one hundred dollars, and having made the oath (or affirmation) required by the said Act.

Dated at, this day of, A.D.

SCHEDULE B.

Form of License for person employed in a Hunting Expedition and not Domiciled in Newfoundland.

THE PRESERVATION OF DEER ACT.

Under the provisions of "The Preservation of Deer Act" permission is hereby given to of to accompany of who has obtained and holds a license to hunt, kill or pursue caribou, dated in the capacity of, a fee of fifty dollars having been paid by the said, and the oath (or affirmation) required by the said Act having been made by the said

Dated at this day of A.D.

(Signature).

SCHEDULE C.

Form of License for persons employed on a Hunting Expedition Domiciled in Newfoundland.

THE PRESERVATION OF DEER ACT.

Under and by virtue of the provisions of "The Preservation of Deer Act," permission is hereby given to of, to accompany of, as he having first made the oath (or affirmation) as required by said Act.

Dated at this day of A.D.

SCHEDULE D.

THE PRESERVATION OF DEER ACT.

The information of, in the Island of Newfoundland, who saith that he has reason to suspect and does suspect that (here state the offence against the Act, such as "Meat of caribou is concealed in the premises or property of A. B., of C., in the District of D., and that such caribou was killed in close season in the district of D. by E. F., of C., aforesaid), and (here state the cause of suspicion).

Wherefore he prays that a search warrant may be granted to search such property for the same.

Sworn (or affirmed) before me, this day of
A. D. 19.... at

SCHEDULE E.

Search Warrant.

THE PRESERVATION OF DEER ACT.

Newfoundland,

District of

To all or any of the Constables in the District of

Whereas of, in the district of, has this day made oath (or affirmed) before me, the undersigned, that he hath reason to suspect and doth suspect (here state the offence; see Schedule D).

These are, therefore, to require you in His Majesty's name with proper assistance, diligently to search such premises or property in the day time for the said, and if you shall find the same or any part thereof, you shall bring the same before me or any other Justice of the Peace or Stipendiary Magistrate, to be dealt with according to law.

Given under my hand and seal, at, in the district of, this day of, A. D.

CHAPTER 148.

Of the Preservation of Game.

SECTION

- 1.—Close seasons for Ptarmigan ; penalty for shooting in same
- 2.—Close seasons for migratory birds ; penalty for shooting in same.
- 3.—Prohibition of export of ptarmigan as article of commerce.
- 4.—Recovery of penalty for same.
- 5.—Minister may authorize hunting, &c., out of season, for special purposes.
- 6.—Protection of hares or rabbits.
- 7.—Protection of otter.

SECTION

- 8.—Constables may search, &c.
- 9.—Search warrants.
- 10.—Liability of married women and their husbands.
- 11.—Resisting police, &c.; penalty.
- 12.—Carrying firearms on Sunday ; penalty.
- 13.—Constables, &c., may arrest on view.
- 14.—Exemption of poor settlers.
- 15.—Penalty where no other provided.
- 16.—Recovery and disposition of penalties.

1. No person shall hunt, wound, kill, take, sell, purchase, or give away, or have in his possession any ptarmigan or willow grouse (commonly called partridge), or any other kind of grouse or partridge, or the eggs of any such birds, within this Colony between the twelfth day of January and the first day of October, in any year, under a penalty of not less than twenty-five dollars or more than one hundred dollars, or in default of payment, of imprisonment not exceeding three months: Provided that any person who shall actually have in his possession at or upon the twelfth day of January aforesaid any ptarmigan or willow grouse shall be allowed to offer for sale such ptarmigan or willow grouse, until the twenty-second day of January in such year.

2. No person shall hunt, wound, kill, take, sell, purchase, or give away, or have in his possession, any curlew, plover, snipe, or other wild or migratory birds (excepting wild geese), or the eggs of any such birds, within the Colony, between the twelfth day of January and the twentieth day of August in each year, under a penalty of not less than twenty-five dollars, or more than one hundred dollars, or, in default of payment, of imprisonment not exceeding three months.

3. It shall be unlawful for any person to export from this Colony for sale as an article of commerce any willow or other grouse, or partridge, under a penalty of five dollars for each bird so exported.

4. The penalty provided in the last preceding section may be sued for and recovered in a summary manner by any person before any Justice

of the Peace, and in default of payment of such penalty the person liable therefor may be sentenced by such Justice to imprisonment for a period not exceeding three months.

5. It shall be lawful for the Minister of Marine and Fisheries at any time to authorize the hunting, shooting, taking, killing and export of any willow or other grouse, or partridge, and the taking and export of the eggs of any such game, for the purpose of exchange with or presentation to any other country or any game society, or otherwise, as he may deem expedient and advisable, and on such terms and conditions as he may see fit to impose.

6. Stipendiary Magistrates may, in their respective districts, by printed public notice prohibit the destruction of rabbits or hares within any part of such district, to be described and limited in such notice, for such time as may be deemed necessary for the propagation of such rabbits or hares in such parts of districts, under a penalty not exceeding twenty-five dollars, or, in default of payment, imprisonment for a period not exceeding one calendar month.

7. No person shall take, kill, wound, or destroy any otter within this Colony between the first day of April and the first day of October in any year, under a penalty of twenty-five dollars, or, in default of payment, imprisonment for a period not exceeding one calendar month.

8. Any constable or peace officer may search any person whom he may have good cause to suspect of being unlawfully in possession of any birds or animals in this Chapter mentioned, and such constable or peace officer may stop and search any cart or other conveyance in which he may have good cause to suspect that any such birds or animals are being carried by such person; and should any such birds or animals aforesaid, be found upon such person, cart, or conveyance, he shall seize and detain such birds or animals.

9. Upon information, upon oath, in writing, being lodged with a Justice, of any person having in his possession, by secreting in his house or other building or place, any such birds or animals aforesaid in violation of the provisions of this Chapter, such Justice shall issue his warrant, directed to any constable or peace officer, to search therein; and should any such birds or animals aforesaid be found therein, such constable or peace officer shall seize and detain the same, and shall cite the offender before such Justice, to be dealt with according to law.

10. Married women concerned in any breach of the provisions of this Chapter shall be liable for the penalty attaching to such breach as if they were unmarried women or principals, but the husband of the person so offending shall not be liable to be also sued for the same offence; in the case of a married woman the fine or penalty imposed may be levied upon the property of the husband.

11. Any person resisting any constable or peace officer engaged in carrying out the provisions of this Chapter shall be liable to a penalty not exceeding one hundred dollars, or, in default of payment, imprisonment for a period not exceeding six months.

12. Any person, except a traveller on a journey, found on Sunday carrying fire-arms shall be subject to a fine not exceeding forty dollars, or, in default of payment, to imprisonment for a period not exceeding one month.

13. Any constable or peace officer may arrest on view any person found violating the provisions of this Chapter.

14. Nothing contained in this Chapter shall extend to any poor settler who shall kill any birds or animals, mentioned in this Chapter, for his immediate consumption or that of his family.

15. Any offence against the provisions of this Chapter for which no penalty is hereinbefore specifically provided shall be punishable by a fine not exceeding twenty-five dollars, or, in default of payment, by imprisonment not exceeding one month.

16. All fines and penalties under this Chapter shall be sued for and recovered in a summary manner, on complaint before a Justice of the Peace, by any person who shall inform and sue for the same, and all penalties and forfeitures imposed under this Chapter shall be awarded and paid to such complainant who shall prosecute the offender to conviction; and such Justice of the Peace shall have power to award all costs and expenses consequent upon such complaint and prosecution, in addition to the penalty hereinbefore provided to be paid therewith.

CHAPTER 149.

Of the Preservation of Beavers.

SECTION

- 1.—Killing of beavers prohibited till 1918.
- 2.—Penalty for purchasing, &c., beavers.
- 3.—Penalty for procuring, &c., beavers.
- 4.—Permission may be granted to certain societies.
- 5.—Powers of officers.

SECTION

- 6.—Recovery of penalties.
- 7.—Possession *prima facie* evidence
- 8.—Respecting confiscation.
- 9.—Respecting exportation of confiscated skins.

1. Any person who shall hunt, kill, pursue or take any beaver within this Colony at any time from the first day of October, 1913, to the first day of October, 1918, shall, upon conviction, for the first offence, be imprisoned for two months with hard labor, with the option of a fine not exceeding two hundred dollars, and not less than fifty dollars; for the second offence the penalty shall be imprisonment for six months with hard labor.

2. Any person who shall purchase, receive or have in his possession any skin or carcase of a beaver killed or taken in violation of the provisions of this Chapter shall be liable to a penalty for a first offence not exceeding two hundred dollars, or in default imprisonment not exceeding two months; and for a second offence shall be imprisoned for six months with hard labor.

3. Any person who advances or promises to advance any money or goods for the purpose of purchasing or procuring beavers or beaver skins, or who agrees to reward, or rewards any person for hunting, taking, exporting or procuring any beaver or beaver skins during the period mentioned in the first section, or who exports or causes to be exported any skin of a beaver shall, upon conviction, for a first offence, be imprisoned for two months with hard labor, with the option of a fine not exceeding five hundred dollars, and not less than two hundred dollars; for a second offence the penalty shall be imprisonment for one year with hard labor, together with a fine not exceeding five hundred dollars and not less than two hundred dollars.

4. Upon a requisition in writing made to the Minister of Marine and Fisheries, permission may be granted to any scientific or zoological

body or society to hunt and capture not more than six live beavers for exportation from the Colony or otherwise.

5. Any Magistrate, Justice of the Peace, Constable, Customs' officer or game warden who believes or has reason to believe that any beavers or beaver skins are in or upon any house, shop, store, wharf or premises, vessel, or boat, or in any package or luggage, in contravention of this Chapter, may enter upon such house, shop, store, premises, vessel or boat, using, if necessary, sufficient force for the purpose, and search therein and open and examine the contents of any package or luggage, and should any beaver or beaver skins have been placed there with his knowledge and consent, the said owner or lessee, upon conviction, for a first offence, shall be imprisoned for two months with hard labor, with the option of a fine not exceeding five hundred dollars and not less than fifty dollars; for a second offence the penalty shall be imprisonment for one year with hard labor, together with a fine not exceeding five hundred dollars and not less than two hundred dollars.

6. The penalties under this Chapter shall be sued for and recovered in a summary manner before a Magistrate or Justice by any person, and one-half of the money penalty shall be awarded and paid to the person who shall prosecute an offender to conviction. The Magistrate or Justice before whom a conviction is had shall have power to award such one-half of the penalty to the said person.

7. If within the period mentioned in the first section of this Chapter, any person shall have in his possession any beaver or skin, or carcass of a beaver, such possession shall be *prima facie* evidence of a violation of this Chapter.

8. In addition to the penalties hereinbefore provided, all beavers and beaver skins found in the possession of any person in contravention of this Chapter shall be confiscated.

9. Whenever under any conviction under this Chapter, any skins or skin are or is confiscated the same may be exported by the usual export entry.

CHAPTER 150.

Of the Preservation of Foxes.

SECTION

- 1.—Close season; penalty for killing in.
- 2.—Customs officers may search for.

SECTION

- 3.—Recovery and disposition of penalties.
- 4.—Confiscated skins may be exported.

1. No person shall hunt, kill, or pursue with intent to kill, any fox within this Colony from the fifteenth day of March to the fifteenth day of October in any year, under a penalty for each offence not exceeding two hundred dollars, and not less than fifteen dollars, and confiscation of the animals or skins.

2. Any Customs' officer who believes or has reason to believe that any luggage or package contains any skin or skins in contravention of the provisions of this Chapter, may open the same and examine its contents.

3. The penalties under this Chapter shall be sued for and recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace by any person who shall sue for the same, and one half of the money penalty shall be awarded and paid to the person who shall prosecute an offender to conviction. The Justice or Magistrate before whom a conviction is had shall have power to award such one half of the penalty to the said person.

4. Whenever under any conviction under this Chapter, any skins or skin are or is confiscated the same may be exported by the usual export entry.

CHAPTER 151.

Of Killing Wolves.

SECTION

1.—A reward of \$12 paid for each wolf killed.
2.—Justices to give certificates.

SECTION

3.—Return of such certificates to be laid before the Legislature.

1. Any person who shall produce or cause to be produced before any Justice the skin of a wolf recently killed within this Colony, and shall make and subscribe, or cause to be made and subscribed, a declaration in manner and form as in Schedule A. of this Chapter, that the same was killed by or for such person, shall be paid a reward of twelve dollars; and if any declaration so made shall be false, the person wilfully making such false declaration shall be guilty of a misdemeanor.

2. Such Justice shall, on such proof being exhibited, detain or destroy the said skin, and give to the person applying a certificate as in Schedule B. of this Chapter, which being laid before the Minister of Finance and Customs he shall pay to the person so applying the sum of twelve dollars.

3. There shall be laid before the Legislature at the opening of every session, a return of the number of such certificates so presented to the Minister of Finance and Customs, with the name and residence of the Justice certifying, and the name and residence of the party to whom such reward was thereby made payable.

SCHEDULE A.

I, A. B., of, in the electoral district of, do solemnly declare that I (or C. D., of, in the district of, in my presence) on the day of, in the year of our Lord, at, in the district of within the island of Newfoundland, did kill a wolf, the skin of which I have deposited with E. F., Esquire, Justice of the Peace at in the electoral district of Newfoundland.

SCHEDULE B.

I, E. F., a Justice of the Peace do hereby certify that A. B., of, in the electoral district of,

within the Colony of Newfoundland, came before me and deposited with me the skin of a wolf, and being examined, did solemnly declare the same was killed on the day of, in the year, by him (or C. D., in his presence), at, in the electoral district of

Given under my hand this day of in the year of our Lord

E. F.

TITLE XXIV.

OF PATENTS, COPYRIGHTS AND TRADE MARKS.

CHAPTER 152

Of Patents.

SECTION

- 1.—Governor in Council may grant letters patent for new and useful inventions.
- 2.—The improver of a patented invention may have a patent for his improvement.
- 3.—Copy of letters patent and of petition may be received from the Colonial Secretary's Office.
- 4.—Oath or affirmation to be taken before patent is granted.
- 5.—Description of invention and model with drawings thereof to be filed with petition.
- 6.—Applicant to have rights for six months after petition, &c.
- 7.—Patentee may assign his interest in patent.
- 8.—Forfeiture for infringing patent rights.
- 9.—In actions for infringement, general issue may be pleaded.
- 10.—No applicant to be deprived of his right to a patent in this colony by reason of obtaining patent elsewhere. No patent to be in force in this Colony which has expired elsewhere.

SECTION

- 11.—Letters patent may issue to assignee of patent obtained elsewhere.
- 12.—Patents not in operation within twelve months to be forfeited.
- 13.—Notice of application for patents to be published in *Gazette*, &c.
- 14.—Remedy where patentee takes a larger interest than his invention entitles him to.
- 15.—Disclaimer of surplus where specification is too broad.
- 16.—Remedy where patent becomes invalid by reason of a defect in description, &c.
- 17.—Original patentee's right to patent any improvement he may make on his invention.
- 18.—No patent granted elsewhere to be of effect in this Colony, until specifications, &c., be filed in Colonial Secretary's office.
- 19.—Affirmations and oaths.
- 20.—Fees.

1. Whenever any person shall apply to the Governor in Council, alleging that he has invented and discovered any new and useful art, machine, manufacture or composition of matter not heretofore known or used, and shall, by petition to the Governor in Council, signify his desire to obtain an exclusive property in such new invention and discovery, and shall pray that a patent be granted for the same, the Governor in Council may direct letters patent under the Great Seal of the Colony to be issued, which letters patent shall recite the allegations and suggestions of the said petition, and shall therein give a short description of the said invention and discovery; and thereupon shall grant to such person, his executors, administrators or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, constructing and using, and vending to others to be used the said new invention or discovery; which letters patent shall be good and available to the grantee therein named, by force of this Chapter, and shall be recorded in the office of the Colonial Secretary in a book to be kept for that purpose, and shall be delivered to the patentee; and the Governor in Council may insert in any such letters patent a pro-

vision extending the operation thereof for a further term of seven years. Before the Great Seal of this Colony shall be affixed to any such letters patent, or the same shall be issued or signed as aforesaid, such letters patent shall be delivered to His Majesty's Minister of Justice, who shall examine the same, and shall, if he finds the same conformable to this Chapter, certify accordingly, and return the same within fifteen days into the office of the Colonial Secretary, to be issued and signed.

2. Where any such letters patent shall be obtained by any person, and thereafter any other person shall discover or make any improvement in the principle or process of any such art, machine, or composition of matter for which such patent has been granted, and shall make application for and obtain letters patent under this Chapter for the exclusive right of such improvement, the person who shall obtain and procure letters patent for any such improvement shall not make, use or vend the original invention or discovery, nor shall the person who shall have procured letters patent for the original invention or discovery, make, use or vend any such improvement: Provided, that simply changing the form or the proportions of any machine or composition of matter in any degree, shall not be deemed a discovery or improvement within the meaning of this Chapter.

3. Any person may obtain from the office of the Colonial Secretary a copy of any such letters patent or of the petition whereon the same were issued, or of any paper connected therewith, or any drawing relating to the same, on payment for such copy of such fees as are now payable at the office of the Colonial Secretary for copies of other documents.

4. Before any person shall receive any letters patent under this Chapter such person shall make oath in writing that he doth verily believe that he is the inventor or discoverer of the art, machine, composition of matter, or improvement for which he solicits letters patent, and that such invention or discovery hath not, to the best of his knowledge or belief, been known or used in this Colony or in any other country, which oath shall be delivered with the petition for such letters patent.

5. Together with such petition and oath, before any person shall obtain any letters patent, as aforesaid, such person shall also deliver into the office of the Colonial Secretary a written description of his invention, and of the manner of using or process of compounding the same, in such full, clear and exact terms as to distinguish the same from all other things before known and to enable any person skilled in the art or science of which it is a branch, or with which it is most nearly connected, to make,

compound and use the same; and in case of any machine, shall deliver a model thereof into the office of the Colonial Secretary, and shall explain the principle and the several modes in which such person has contemplated the application of that principle or character by which it may be distinguished from other inventions; and shall accompany the whole with drawings and written references, where the nature of the case admits of drawings, or with specimens of the ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention is of a composition of matter, which description, signed by such person and attested by two witnesses, shall be filed in the office of the Colonial Secretary, and copies thereof, certified under his hand, shall be evidence in all Courts where any matter or thing touching or concerning the said letters patent shall come into question: Provided that where, from the complicated nature of any machinery, the cost of a model thereof may be so great as to prevent any ingenious but poor person from obtaining patents for his useful inventions, the Governor in Council may dispense with the delivery of such model into the office of the Colonial Secretary previous to the granting of any such patent; and the requirements of this Chapter being in all other respects complied with, such person shall be entitled to such patent as if such model had been so lodged.

6. After the expiration of one week from the date of the delivery into the office of the Colonial Secretary of the petition, oath and description of invention, as prescribed in sections 1, 4 and 5 of this Chapter, and until the expiration of six months, from said date of delivery, the applicant for letters patent for any invention shall have the like privileges and rights as if letters patent under the provisions of the said Chapter had been sealed and delivered on the date of said delivery.

7. Any patentee, his executors or administrators, may assign all his right, title and interest in the said invention and discovery in the letters patent to him granted, to any person, and the assignee thereof having recorded the said assignment in the office of the Colonial Secretary, shall thereafter stand in the place and stead of the original patentee, as well as to all right, privilege and advantage, as also in respect of all liability and responsibility as to the letters patent, and the invention and discovery thereby secured; and in like manner shall the assignees of any such assignee stand in the place and stead of the original patentee or inventor.

8. Whenever in any case any letters patent shall be or shall have been granted to any person under and by virtue of this Chapter, and any person, without the consent of the patentee, his executors, administrators

or assigns first had and obtained in writing, shall make, devise, use, or sell the thing, invention or discovery whereof the exclusive right is secured to the said patentee by such letters patent, such person so offending shall forfeit and pay to the said patentee, his executors, administrators, or assigns, a sum equal to three times the actual damage sustained by such patentee, his executors, administrators or assigns, from or by reason of such offence, which sum may be recovered, together with costs, by action founded on this Chapter, in the Supreme Court.

9. The defendant in such action may plead the general issue, and give this Chapter and any special matter in evidence, tending to prove that the specification filed by the plaintiff does not contain the whole truth relative to the invention or discovery therein alleged to have been made by the said plaintiff, or that it contains more than is necessary to produce the described effect, (which concealment or addition shall fully appear to have been made for the purpose of deceiving the public), or that the thing, invention or discovery thus secured by letters patent as aforesaid was not originally discovered by the patentee, but had been in use or had been described in some public work anterior to the supposed invention or discovery of the said patentee or that he had surreptitiously obtained letters patent as aforesaid for the invention or discovery of some other person; in either of which cases, upon proof thereof, a verdict shall be returned and a judgment shall be entered for the said defendant with costs, and the said letters patent shall thereupon be and shall by the said Court be adjudged void.

10. No applicant shall be deprived of his right to a patent in this Colony for his invention by reason of his having previously taken out letters patent therefor in any other country: Provided that such invention shall not have been introduced into public and common use in this Colony prior to the application for a patent therein, and the patent granted in this Colony shall not continue in force after the expiration of the patent granted elsewhere; and where more than one such patent or like privilege is obtained abroad, then immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges, the patent granted in this Colony shall cease to be in force; and no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained elsewhere, and which shall be granted in this Colony, after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

11. Any letters patent may be issued by the Governor in Council

to the assignees of any person who may have taken out Letters Patent for his invention or discovery in any other country, but not for any invention or discovery made abroad for which no letters patent have been there obtained; provided that the invention or discovery so assigned shall not have been introduced into public or common use in this Colony prior to the application for a patent, and that the assignee of such foreign patent shall file with his application a true and correct copy of the assignment duly certified as such under the seal of a Notary Public, a Commissioner of the Supreme Court, a Judge of a Court of Record, the Mayor or Chief Magistrate of any city or town, a Justice or British Ambassador, Consul, Vice-Consul, or Consular Agent and an affidavit setting forth the date of the patent abroad, that the article to be patented has not been in public or common use in this Colony, and that he is assignee for good consideration.

12. Any letters patent which may be taken out under or by virtue of this Chapter, and which shall not have been brought into operation within two years next ensuing from and after the date thereof, shall, at the expiration of the said period of two years, be void.

13. No letters patent shall be granted under or by virtue of this Chapter until notice shall have been published in the *Royal Gazette*, and one other of the newspapers of this Colony, for at least four weeks, of the intention of the applicant to apply for such letters patent; and such notice shall contain, in general terms, the description of the invention for which such letters patent shall be desired.

14. If by mistake, accident or inadvertence, and without any wilful default or intent to defraud or mislead the public, a patentee shall in his specification have claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, but of which he was not the original or first inventor, and shall have no just or legal right to claim the same, his patent in such case shall be valid for so much of the invention or discovery as shall be actually his own, provided it is a material and substantial part of the thing patented, and be plainly distinguishable from other parts patented without right; and every such patentee and his legal representatives, whether holding the whole or a particular interest in the patent, may maintain an action for any infringement of such part of the same as is actually the invention or discovery of the patentee, although his specification may embrace more than he has a legal right to claim; but if in such case the plaintiff shall obtain a verdict or judgment, he shall not be entitled to

costs, unless before the commencement of the suit he shall have filed in the office of the Colonial Secretary a disclaimer, attested by a witness, of that part of the thing patented which was claimed without right; and no person bringing a suit shall be entitled to the benefits of this section if he shall have unreasonably neglected or delayed to record his disclaimer.

15. If through inadvertence, accident or mistake, a patentee shall have made his specification too broad, by claiming more than that of which he was the original or first inventor (some material and substantial part of the thing patented being justly and truly his own), such patentee or his legal representatives may disclaim the excess; the disclaimer shall be in writing, and shall state the extent of interest in the patent held by the party making the same; it shall be attested by a witness, and be recorded in the office of the Colonial Secretary; thereafter such disclaimer shall be considered as part of the original specification, to the extent of the interest possessed by the party making the same, or by those claiming under him; but no such disclaimer shall affect any action or suit pending at the time of its being recorded, except so far as may relate to the question of unreasonable neglect or delay in recording the same.

16. If any patent shall become inoperative or invalid by reason of a defective or insufficient description or specification, or by reason of the patentee claiming in his specification, as his own invention, more than he had a right to claim, and the error has arisen from inadvertence, accident or mistake, and without any fraudulent or deceptive intention, the Governor in Council upon the surrender of such patent, and upon petition therefor, may cause a new patent to be issued to the patentee for the residue of the term mentioned in the first patent, in accordance with the patentee's amended description and specification. In case of his death or the assignment by him of the original patent or any fractional interest therein, the right shall vest in his legal representatives, to the extent of their respective interests in such patent; and the patent so re-issued, together with the amended description and specification, shall have the same effect and operation in law as though the same had been originally filed in such amended form before the issuing of the original patent.

17. If an original patentee shall be desirous of adding a description and specification of an improvement upon his original invention or discovery, made or discovered by him subsequent to the date of his patent, he may, upon the like proceedings being had in all respects as in the case of an original application, have the same annexed to his original description and specification; and the Colonial Secretary shall certify upon such

annexed description and specification the time of its being annexed and recorded; and thereafter it shall have the same effect in law as if it had been embraced in the original description and specification, and had been recorded therewith.

18. No patent for any invention or discovery granted in England or elsewhere out of the Colony, and extending to the colonies, shall be of force and effect in this Colony until copies of the original specification and drawing filed, or duplicates of the models lodged in England or elsewhere out of the Colony, upon which such patent was there obtained, shall be filed or lodged in the office of the Colonial Secretary, who shall grant a certificate of the lodging or filing the same.

19. All oaths required by this Chapter may be taken in this Colony before a Judge of the Supreme Court or a commissioner for taking affidavits in the same: And outside this Colony before a commissioner of the Supreme Court, a Judge of a Court of Record, the Mayor or Chief Magistrate of any city or town, a Justice, British ambassador, consul, vice-consul or consular agent or a notary public; and the attestation with the date thereof shall, when made before a Judge of a Court or Record or a Mayor of any city or town, be certified under the seal of such court, city or town.

20. Any person who may take out letters patent under this Chapter shall pay for the same such fees as are charged on documents issued under the Great Seal of this Colony and shall in addition deposit with the Colonial Secretary the sum of twenty-five dollars, to be by him paid to the Minister of Finance and Customs for the use of the Colony.

CHAPTER 153.

Of Copyrights.

SECTION 1.—Imperial Act 1 and 2, George V., Cap. 46, to be in force in Newfoundland.

1. The Act of the Imperial Parliament 1 and 2 George V., Chapter 46, entitled “An Act to Amend and Consolidate the Law relating to Copyright,” and all the provisions thereof except such as are expressly restricted to the United Kingdom by the said Act, shall be in force throughout the Colony of Newfoundland.

CHAPTER 154.

Of Trade Marks and the Registration thereof.

SECTION

- 1.—Offences in relation to trade marks. Penalties, procedure, &c.
- 2.—Meaning of expressions and application of provisions of chapter.
- 3.—What to be deemed forging a trade mark.
- 4.—What to be deemed applying a trade mark.
- 5.—What shall be considered a defence.
- 6.—Relating to watches.
- 7.—Statements in indictments.
- 8.—Evidence.
- 9.—Accessories.
- 10.—Search warrants, forfeiture, destruction of articles forfeited.
- 11.—Application of Imperial Act 22 & 23 Vic., Cap. 17.
- 12.—Costs.
- 13.—Commencement of prosecutions.
- 14.—Prohibiting importation of goods liable to forfeiture.
- 15.—Vendor of goods deemed to warrant trade mark genuine.

SECTION

- 16.—Where trade description applied to goods of particular class.
- 17.—This chapter not to exempt from other suit or proceeding.
- 18.—False representation as to royal warrant, or service. Penalty.
- 19.—Register of trade marks.
- 20, 21, 22.—Essentials of trade marks for registration.
- 23.—Rules and regulations to be made by Colonial Secretary.
- 24.—Essentials of application for registration.
- 25.—Fees on registration.
- 26.—Colonial Secretary may object to register in certain cases.
- 27.—On compliance with requirements of chapter, registration to take place.
- 28.—Trade mark registered to endure without limitation.
- 29.—Trade marks assignable.
- 30.—Fraudulent use of trade mark. Penalty.
- 31.—Action for infringement.

1. (1) Every person who—

(a) Forges any trade mark; or

(b) Falsely applies to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive; or

(c) Makes any die, block, machine, or other instrument for the purpose of forging, or of being used for forging, a trade mark; or

(d) Applies any false trade description to goods; or

(e) Disposes or has in his possession, any die, block, machine, or other instrument for the purpose of forging a trade mark; or

(f) Causes any of the things above in this section mentioned to be done,

shall, subject to the provisions of this Chapter, and unless he proves that he acted without intent to defraud, be guilty of an offence against this Chapter.

(2) Every person who sells, or exposes for sale, or has in his possession for sale, or for any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark, or mark so nearly resembling a trade mark as to be calculated to deceive, is falsely applied, as the case may be, shall be guilty of an offence against this Chapter, unless he proves—

(a) That having taken all reasonable precautions against committing an offence against this Chapter, he had at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and

(b) That on demand made by or on behalf of the prosecutor, he gave all information in his power with respect to the persons from whom he obtained such goods or things; or

(c) That otherwise he had acted innocently.

(3) Every person guilty of an offence against this Chapter shall be liable—

(a) On conviction, on indictment, to imprisonment, with or without hard labour, for a term not exceeding two years, or to fine, or to both imprisonment and fine; and

(b) On summary conviction, to imprisonment, with or without hard labour, for a term not exceeding four months, or to a fine not exceeding one hundred dollars; and in the case of a second or subsequent conviction, to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding two hundred dollars, and

(c) In any case, to forfeit to His Majesty every chattel, article, instrument, or thing, by means of or in relation to which the offence has been committed.

(d) The Court before which any person is convicted under this section may order any forfeited articles to be destroyed, or otherwise disposed of, as the Court thinks fit.

(e) If any person feels aggrieved by any conviction made by a Court of summary jurisdiction, he may appeal therefrom to the Supreme Court.

- (f) Any offence for which a person is, under this Chapter, liable to punishment, on summary conviction, may be prosecuted, and any articles liable to be forfeited under this Chapter by a Court of summary jurisdiction, may be forfeited: Provided that a person charged before a Court of summary jurisdiction with an offence under this section, shall, on appearing before the Court, and before the charge is gone into, be informed of his right to be tried on indictment, and if he requires, be tried accordingly.

2. (1) For the purpose of this Chapter—

The expression “trade mark” means a trade mark registered in the register of trade marks kept under the provisions of this Chapter and includes any trade mark which, either with or without registration, is protected by law in any British possession or foreign state, to which the provisions of the one hundred and third section of the Imperial “Patents, Designs and Trade Marks’ Act, 1883,” or of the ninety-first section of the Imperial “Patents and Designs Act, 1907,” are under order in Council for the time being applicable.

The expression “trade description” means any description, statement or other indication, direct or indirect.

- (a) As to the number, quantity, measure, gauge or weight of any goods; or
- (b) As to the place or country in which any goods were made or produced; or
- (c) As to the mode of manufacturing or producing any goods; or
- (d) As to the material of which any goods are composed; or
- (e) As to any goods being the subject of an existing patent privilege or copyright,

and the use of any figure, word, or mark which, according to the custom of the trade, is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Chapter.

The expression “false trade description,” means a trade description which is false in a material respect as regards the goods to which it is applied, and includes every alteration of a trade

description, whether by way of addition, effacement, or otherwise, where that alteration makes the description false in a material respect, and the fact that a trade description is a trade mark, or part of a trade mark, shall not prevent such trade description being a false trade description within the meaning of this Chapter.

The expression “goods,” means anything which is the subject of trade, manufacture, or merchandise;

The expressions “person,” “manufacturer,” “dealer,” or “trader,” and “proprietor,” include any body of persons whether corporate or not;

The expression “name,” includes any abbreviation of a name.

(2) The provisions of this Chapter, respecting the application of a false trade description to goods, shall extend to the application to goods of any such figures, words, or marks, or arrangement, or combination thereof, whether including a trade mark or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Chapter, respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means, as applied to any goods, any name or initials of a person which—

- (a) Are not a trade mark, or part of a trade mark; and
- (b) Are identical with, or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and
- (c) Are either those of a fictitious person or of some person not *bona fide* carrying on business in connection with such goods.

3. A person shall be deemed to forge a trade mark who either—

(1) Without the assent of the proprietor of the trade mark, makes that trade mark, or a mark so nearly resembling that trade mark, as to be calculated to deceive; or

(2) Falsifies any genuine trade mark, whether by alteration, addition, effacement, or otherwise;

and any trade mark or marks so made or falsified, is in this Chapter referred to as a forged trade mark: Provided that in any prosecution for forging a trade mark, the burden of proving the assent of the proprietor shall lie on the defendant.

4. (1) A person shall be deemed to apply a trade mark, or mark or trade description to goods, who—

(a) Applies it to the goods themselves; or

(b) Applies it to any covering, label, reel, or other thing in or with which the goods are sold, or exposed, or had in possession for any purpose of sale, trade or manufacture; or

(c) Places, encloses, or annexes any goods which are sold, or exposed, or had in possession for any purpose of sale, trade or manufacture in, with, or to any covering, label, reel, or other thing to which a trade mark or trade description has been applied; or

(d) Uses a trade mark, or mark, or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or trade description.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper; and the expression “label” includes any band or ticket.

A trade mark, or mark or trade description, shall be deemed to be applied whether it is woven, impressed, or otherwise worked into, or annexed, or affixed to the goods, or to any covering, label, reel, or other thing.

(3) A person shall be deemed to falsely apply to goods a trade mark or marks, who, without the assent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly

resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade mark or mark to goods, the burden of proving the assent of the proprietor shall lie on the defendant.

5. Where a defendant is charged with making any die, block, machine, or other instrument, for the purpose of forging, or being used for forging, a trade mark, or with falsely applying to goods any trade mark, or any mark so nearly resembling a trade mark, as to be calculated to deceive, or with applying to goods any false trade description, or causing any of the things in this section mentioned to be done, and proves—

- (1) That in the ordinary course of his business he is employed, on behalf of other persons, to make dies, blocks, machines, or other instruments for making, or being used in making trade marks, or as the case may be, to apply marks or descriptions to goods, and that in the case which is a subject of the charge, he was so employed by some person resident in Newfoundland, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (2) That he took reasonable precautions against committing the offence charged; and
- (3) That he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark, or trade description; and
- (4) That he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or trade description was applied,

he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he has given due notice to him that he will rely on the above defence.

6. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall *prima facie* be deemed to be a description of that country within the meaning of this Chapter, and the provisions of this Chapter with respect to goods to which a false trade description has been applied, and with

respect to selling or exposing for, or having in possession for, sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly, and for the purposes of this section the expression "watch" means all that portion of a watch which is not the watch case.

7. In any indictment, pleading, proceeding, or document, in which any trade mark or forged trade mark is intended to be mentioned, it shall be sufficient, without further description and without any copy or facsimile, to state that trade mark or forged trade mark to be a trade mark or forged trade mark.

8. In any prosecution for an offence against this Chapter—

- (1) A defendant, and his wife or her husband, as the case may be, may, if the defendant thinks fit, be called as a witness, and, if called, shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness.
- (2) In the case of imported goods, evidence of the port of shipment shall be *prima facie* evidence of the place or country in which the goods were made or produced.

9. Any person who, being within Newfoundland, procures, counsels, aids, abets, or is accessory to the commission, without Newfoundland, of any act, which, if committed in Newfoundland, would under this Chapter be a misdemeanor, shall be guilty of that misdemeanor as principal, and be liable to be indicted, proceeded against, tried, and convicted in any place in Newfoundland in which he may be, as if the misdemeanor had been there committed.

10. (1) Where, upon information of an offence against this Chapter, a Justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same, or a warrant for the arrest of such defendant, and either the said Justice on or after issuing the summons or warrant, or any other Justice is satisfied by information on oath that there is reasonable cause to suspect that any goods or things, by means of, or in relation to, which such offence has been committed, are in any house or premises of the defendant, or otherwise in his possession, or under his control in any place, such Justice may issue a warrant under his hand, by virtue of which it shall be lawful for any

constable, named or referred to in the warrant, to enter such house, premises, or place, at any reasonable time by day, and to search there for, and seize and take away, those goods or things; and any goods or things seized under any such warrant shall be brought before a **Court of summary jurisdiction** for the purpose of its being determined whether the same are or are not liable to forfeiture under this Chapter.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Chapter, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture, and a court of summary jurisdiction may cause notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited, and at such time and place the Court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things, or any of them, to be forfeited.

(3) Any goods or things forfeited under this section, or under any other provision of this Chapter, may be destroyed or otherwise disposed of in such manner as the Court by which the same are forfeited may direct, and the Court may, out of any proceeds which may be realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

11. The Imperial act of the session of the twenty-second and twenty-third years of the reign of her late Majesty Queen Victoria, chapter seventeen, entitled "An Act to prevent vexatious indictments for certain misdemeanors," shall apply to any offence punishable on indictment under this Chapter in like manner as if such offence were one of the offences specified in section one of that act.

12. On any prosecution under this Chapter, the Court may order costs to be paid to the defendant by the prosecutor, or to the prosecutor by the defendant having regard to the information given by and the conduct of the defendant and prosecutor respectively.

13. No prosecution for an offence against this Chapter shall be

commenced after the expiration of three years next after the commission of the offence, or one year next after the discovery thereof by the prosecutor, whichever expiration first happens.

14. (1) All goods which if sold in this Colony would be liable to forfeiture under this Chapter, and also all goods of foreign manufacture, bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in the United Kingdom or Newfoundland, unless such name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into Newfoundland, and subject to the provisions of this section shall be included among goods prohibited to be imported as if they were specified in section 134 of Chapter twenty-two of these Consolidated Statutes.

(2) Before detaining any such goods, or taking any further proceedings with a view to the forfeiture thereof under the law relating to the customs, the Minister of Finance and Customs may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited by this section to be imported.

(3) The Minister of Finance and Customs may, from time to time, make, revoke and vary regulations, either general or special, respecting the detention and forfeiture of goods, the importation of which is prohibited by this section, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence.

(4) Where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the United Kingdom or Newfoundland, that name, unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in Newfoundland.

(5) Such regulations may apply to all goods, the importation of which is prohibited by this section, or different regulations

may be made respecting different classes of such goods or of offences in relation to such goods.

(6) The Minister of Finance and Customs, in making and administering the regulations, and generally in the administration of this section, whether in the exercise of any discretion or opinion, or otherwise, shall act under the control of the Governor in Council.

(7) The regulations may provide for the informant reimbursing the Minister of Finance and Customs for all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(8) All regulations under this subject shall be published in the *Royal Gazette*.

(9) This section shall have effect as if it were part of Chapter twenty-two of these Consolidated Statutes.

15. On the sale, or in the contract for the sale, of any goods to which a trade mark, or mark, or trade description, has been applied, the vendor shall be deemed to warrant that the mark is a genuine trade mark and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Chapter, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee.

16. Where at the passing of this Chapter a trade description is lawfully and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Chapter with respect to false trade description shall not apply to such trade descriptions when so applied; Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

- 17.** (1) This Chapter shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Chapter, be brought against him.
- (2) Nothing in this Chapter shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence against this Chapter.
- (3) Nothing in this Chapter shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Newfoundland, who *bona fide* acts in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

18. Any person who falsely represents that any goods are made by a person holding a royal warrant, or for the service of His Majesty, or any of the royal family, or any government department, shall be liable, on summary conviction, to a penalty not exceeding one hundred dollars.

19. A register of trade marks shall be kept at the office of the Colonial Secretary, in which any proprietor of a trade mark may have the same registered on complying with the provisions of this Chapter.

- 20.** (1) For the purposes of this Chapter, a trade mark must consist of or contain at least one of the following essential particulars:
- (a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or
 - (b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or
 - (c) A distinctive device, mark, brand, heading, label or ticket; or
 - (d) An invented word or invented words; or
 - (e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.
- (2) There may be added to any one or more of the essential particulars mentioned in this section, any letters, words or figures,

or any of them; but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

(3) Provided as follows:

(a) A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business; but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof;

(b) Any special and distinctive word or words, letter, figure or combination of letters or figures, or of letters and figures used as a trade mark before the coming into force of these Consolidated Statutes, may be registered as a trade mark under this Chapter.

21. A trade mark must be registered for particular goods or classes of goods.

22. A trade mark may be registered in any colour or colours, and such registration shall (subject to the provisions of this Chapter) confer on the registered owner the exclusive right to use the same in that or any other colour or colours.

23. The Colonial Secretary, subject to the approval of the Governor in Council, may make rules and regulations, and adopt forms for the purposes of this Chapter as respects trade marks, and all documents executed according to the same, and accepted by the Colonial Secretary, shall be deemed to be valid so far as relates to official proceedings under this Chapter.

24. The proprietor of a trade mark may have it registered on forwarding to the Colonial Secretary, together with the fee hereinafter mentioned, a drawing and description in duplicate of such trade mark, and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof.

25. (1) Before any action is taken in relation to an application for

registering a trade mark, the following fees shall be paid to the Colonial Secretary, that is to say:—

On every application to register a trade mark, including certificate	\$20.00
For the recording of an assignment	1.00

Such fees to be paid by the Colonial Secretary to the Minister of Finance and Customs for the use of the Colony.

- (2) If the Colonial Secretary refuses to register the trade mark for which application is made, the fee shall be returned to the applicant or his agent, less five dollars, which shall be retained as compensation for office expenses.

26. The Colonial Secretary may object to register any trade mark in the following cases :

- (1) If the trade mark proposed for registration is identical with or resembles a trade mark already registered.
- (2) If it appears that the trade mark is calculated to deceive or mislead the public.
- (3) If the trade mark contains any immorality or scandalous figure.
- (4) If the so-called trade mark does not contain the essentials necessary to constitute a trade mark properly speaking.

27. On compliance with the requirements of this Chapter, and of the rules hereinbefore provided for, the Colonial Secretary shall register the trade mark of the proprietor so applying, and shall return to the said proprietor one copy of the drawing and description with a certificate, signed by the Colonial Secretary, to the effect that the said trade mark has been duly registered in accordance with the provisions of this Chapter; and the day, month and year of the entry of the trade mark in the register shall also be set forth in such certificate; and every such certificate purporting to be so signed shall be received in all courts in Newfoundland as *prima facie* evidence of the fact therein alleged without proof of the signature.

28. A trade mark once registered and destined to be the sign in trade of the proprietor thereof, shall endure without limitation.

29. Every trade mark duly registered shall be assignable in law, and on the assignment being produced, and the fee hereinbefore prescribed being paid, the Colonial Secretary shall cause the name of the assignee, with the date of the assignment and such other details as he shall see fit, to be entered on the margin of the register of trade marks, on the folio where such trade mark is registered.

30. Every person other than the person who has registered the trade mark, who marks any goods, or any article of any description whatsoever, with any trade mark registered under the provisions of this Chapter, or with any part of such trade mark, whether by applying such trade mark, or any part thereof, to the article itself or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark, or who knowingly sells or offers for sale any article marked with such trade mark, or with any part thereof, with the intent to deceive and to induce any person to believe that such article was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark, is guilty of a misdemeanor and liable for each offence to a fine not exceeding one hundred dollars and not less than twenty dollars, which fine shall be paid to the proprietor of such trade mark, together with the costs incurred in enforcing and recovering the same.

- (1) Every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf and thereunto duly authorized.

31. An action or suit may be maintained by any proprietor of a trade mark, which has been registered in pursuance of this Chapter, against any person who uses his registered trade mark, or any fraudulent imitation thereof, or who sells any article bearing such trade mark or any such imitation thereof, or contained in any package, being or purporting to be his, contrary to the provisions of this Chapter.

TITLE XXV.

OF SEA FISHERIES.

CHAPTER 155.

Of Foreign Fishing Vessels.

SECTION

- 1.—Power of officers to board and search foreign vessels.
- 2.—Penalties for offences.
- 3.—Respecting seizure of vessels and penalty for obstructing officers.
- 4.—Evidence of offence committed.
- 5.—Certain aliens not entitled to fish.
- 6.—British subject not to fish in foreign vessel.
- 7.—Residents not to leave Colony to fish in foreign vessels.
- 8.—Residents not to sell or hire fishery gear

SECTION

- 9.—Penalty.
- 10.—Procedure.
- 11.—Appeal.
- 12.—Informality no ground for setting aside proceedings.
- 13.—Foreign vessels exercising treaty rights amenable to local laws.
- 14.—Saving all treaty rights.
- 15.—Governor in Council may limit or suspend Chapter.
- 16.—Interpretation.
- 17.—Suspending clause.

1. Any Justice of the Peace, Sub-Collector, Preventive Officer, Fishery Warden, or Constable, may go on board any foreign fishing vessel being within any port on the coasts of this Colony, or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours in this Colony, and may bring such foreign fishing vessel into port, may search her cargo, and may examine the master upon oath touching the cargo and voyage, and the master or person in command shall answer truly such questions as shall be put to him, under a penalty not exceeding five hundred dollars.

2. If any foreign fishing vessel be found within any port on the coasts of this Colony or hovering in British waters within three marine miles of any of the coasts, bays, creeks, or harbours of this Colony; or having on board any herring, caplin, squid, or other bait fishes, ice, lines, seines, or other outfits or supplies for the fishery, purchased within any port on the coasts of this Colony or within the distance of three marine miles from any of the coasts, bays, creeks, or harbours of this Colony; or if the master, owner or agent of the said vessel shall have engaged, or attempted to engage, any person to form part of the crew of the said vessel in any port, or on any part of the coasts of this Colony, or has entered such waters for any purpose not permitted by treaty or convention for the time being in force, the master, owner or agent shall be liable to a penalty

not exceeding one hundred dollars, or such vessel and the tackle, rigging, apparel, furniture, stores and cargo thereof shall be forfeited, as the magistrate before whom the proceeding is taken shall determine.

3. All goods and vessels, and the tackle, rigging, apparel, furniture, stores and cargo thereof, liable to forfeiture under this Chapter, may be seized and secured by any officer or person mentioned in the first section hereof, and every person opposing any such officer or person in the execution of his duty under this Chapter, or aiding or abetting any other person in such opposition, shall be deemed guilty of a misdemeanor and liable to a fine of five hundred dollars.

4. In any prosecution under this Chapter, the presence on board any foreign fishing vessel in any port of this Colony, or within British waters aforesaid, of any caplin, squid, or other bait fishes, of ice, lines, seines, or other outfit or supplies for the fishery, shall be *prima facie* evidence of the purchase of the said bait fishes and supplies and outfits within such port or waters.

5. No alien, not so entitled by treaty or convention for the time being in force, shall fish in the waters of this Colony; and the master, owner, or agent of any fishing vessel who permits any alien not so entitled to fish in, from or for such vessel shall be liable to a penalty not exceeding one hundred dollars, or to the forfeiture of such vessel, as the magistrate shall determine.

6. No person, being a British subject, shall fish in, from, or for a foreign fishing vessel in the waters of this Colony, and the master, owner, or agent of any foreign fishing vessel who permits any such British subject to fish in, for, or from such vessel, shall be liable to a penalty not exceeding one hundred dollars, or to the forfeiture of such vessel, as the magistrate shall determine.

7. No person, being a resident of this Colony, shall leave this Colony for the purpose of engaging in foreign fishing vessels which are fishing or intending to fish in the waters of this Colony, under a penalty not exceeding one hundred dollars.

8. No person, being a resident of this Colony, shall sell, let, hire, lend or remove from this Colony for the purpose of selling, letting, hiring, or lending to a master, owner or agent of any foreign fishing vessel any boats, nets, or gear, under a penalty not exceeding one hundred dol-

lars; nor shall the master, owner or agent of any foreign fishing vessel buy, hire, or borrow, in any port or place in this Colony, or in the waters of this Colony, any boats, nets, or fishing gear from any person resident in this Colony, under a penalty for each offence not exceeding one hundred dollars.

9. The master of any vessel who conveys any person resident in the Colony outside the waters of the Colony, for the purpose of enabling such person to be engaged on board any foreign fishing vessel, shall be liable to a penalty not exceeding one hundred dollars.

10. All offenders against the provisions of this Chapter may be prosecuted and convicted, and all fines, forfeitures, penalties, and other punishments imposed, recovered and made in a summary manner before a Stipendiary Magistrate; and any vessel, and the tackle, rigging, apparel, furniture, stores and cargo thereof, liable to forfeiture under the provisions of this Chapter, may be sued for, prosecuted, recovered and condemned in a summary manner before a Stipendiary Magistrate in a proceeding against the master or other person in charge of such vessel. For the purposes of this Chapter all Stipendiary Magistrates shall be deemed to be Stipendiary Magistrates for the Colony, and may exercise the jurisdiction given by this Chapter in any part of the Colony.

11. If any person convicted under this Chapter shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of His Majesty's Supreme Court, holden in or nearest the place where such conviction shall have been had, or in St. John's: Provided notice of such appeal, and of the cause and matter thereof, be given to the convicting magistrate in writing within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance, with two approved sureties, before the convicting magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court, on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon, and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court may award.

12. No proceeding or conviction by, or order of any Magistrate or other officer under this Chapter shall be quashed or set aside for any informality, provided the same shall be substantially in accordance with the intent and meaning of this Chapter.

13. All foreign fishing vessels exercising rights under any treaty or convention shall be amenable to all the laws of the Colony not inconsistent with any such rights under treaty or convention.

14. Nothing in this Chapter shall affect the rights and privileges granted by treaty to the subjects of any State in amity with His Majesty; and sections 1 and 4 hereof shall not be held to apply to any foreign fishing vessels resorting to the waters of this Colony for the exercise of treaty rights.

15. The Governor in Council may at any time by proclamation suspend or limit the operation of this Chapter, as to the whole Chapter or any part thereof, and in relation to the whole Colony, or any district or parts thereof, and as to all or any classes of persons, and for any period as shall be expedient and as may be declared in such proclamation.

16. In this Chapter the word "vessel" shall include any boat or ship, registered or not registered, jack, skiff, punt, or launch, whether propelled by sails, oars or steam.

17. This Chapter shall come into operation upon a day to be appointed for that purpose by proclamation of the Governor to the effect that the same has been approved and confirmed by His Majesty in Council.

CHAPTER 156.

Of the Export and Sale of Bait Fishes.

SECTION

- 1.—No person shall export, or haul, catch, take, purchase, or have in his possession, any bait fishes for the purpose of exportation.
- 2.—Licenses may be granted for certain purposes.
- 3.—Licenses issued under certain authority.
- 4.—Power of Governor in Council to suspend or limit operation of chapter.
- 5.—Conditions under which licenses granted.
- 6.—To whom applications for licenses shall be made.
- 7.—Licensee shall give bond to Minister of Finance and Customs.
- 8.—Form of license, bond, &c.
- 9.—Penal clause.
- 10.—Power of convicting Magistrate to confiscate, &c.
- 11.—Penalty for violation of chapter.

SECTION

- 12.—*Onus probandi* upon accused party.
- 13.—Power to appoint Commissioners conferred upon Governor in Council.
- 14.—Power to board and search ships or vessels conferred upon certain persons.
- 15.—Certain persons may be examined on oath by a J. P. and other officials of the Government.
- 16.—Additional powers given to officials.
- 17.—What shall be evidence.
- 18.—Offences may be prosecuted summarily.
- 19.—Appeal.
- 20.—Proceedings not to be set aside for want of form.
- 21.—Interpretation clause.
- 22.—Treaty rights preserved.
- 23.—Power of Stipendiary Magistrates and officers.

1. No person shall—

- (1) Export, or cause or procure to be exported, or assist in the exportation of; or
- (2) Haul, catch, take, or have in his possession, for the purpose of exportation; or
- (3) Purchase or receive in trade or barter, for the purpose of exportation; or
- (4) Take, ship, or put or haul on board, or assist in taking shipping, putting or hauling on board of any ship or vessel for any purpose whatever; or
- (5) Carry or convey on board of any ship or vessel for any purpose whatever,

any herring, caplin, squid, or other bait fishes, from, in or near any parts of this Colony or its Dependencies, or from or in any of the bays, harbors, or other places therein, without a license in writing, to be granted and issued as hereinafter provided.

2. Licenses may be granted for any of the following purposes, viz.:

- (1) To export bait fishes to a foreign country for bait purposes.

- (2) To export bait fishes to a foreign country for food or consumption.
- (3) To export bait fishes for use for bait purposes in prosecuting deep sea fisheries.
- (4) To haul, catch, or take bait fishes for exportation.
- (5) To purchase bait fishes for exportation for food or consumption.
- (6) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for food or consumption.
- (7) To purchase bait fishes for exportation for bait purposes.
- (8) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, bait fishes for exportation for bait purposes.
- (9) To take, ship, or put on board a ship or vessel, or to carry or convey on board a ship or vessel, coastwise, to be discharged or landed or transhipped to some other ship or vessel within some port in this Colony.

3. No such license shall be issued except under the authority of the Governor in Council, and countersigned by the Colonial Secretary.

4. The Governor in Council may, from time to time, by proclamation, suspend or limit the operation of this Chapter, and the issue of licenses thereunder, in relation to any district or part of this Colony, or the coasts thereof, and for such period and in relation to sale or exportation to such places or for such purposes and in such quantities as shall appear expedient, and as shall be declared and defined in the proclamation.

5. No license under this Chapter shall be granted to any person unless he shall have first made an affidavit before a Sub-collector or preventive officer of Customs, or a Stipendiary Magistrate, setting forth the following particulars, viz.: the name of the person to whom the license is to be granted; the name of the vessel on board of which it is intended to convey or export bait fishes; the purpose for which such bait fishes are intended to be conveyed or exported, whether for food or consumption, or for bait purposes; the country to which it is intended to export the same, or the place where the fishery is to be prosecuted for which such bait fishes are to be used.

6. Applications for licenses under this Chapter shall be made to a Stipendiary Magistrate or a Customs' officer, who shall require the applicant in each case to make before him an affidavit stating the facts and particulars, as required under section five to be set forth in the license; and it shall be the duty of the said Stipendiary Magistrate or Customs' officer to report to the Governor in Council any refusal on the part of the applicant to make such affidavit, or any *bona fide* doubt on the part of such Stipendiary Magistrate or Customs' officer of the truth of any of the statements set forth in such affidavit, or of a belief on his part that such license is applied for for the purpose of evading or defeating, or assisting in evading or defeating, the provisions of this Chapter. In such case it shall be the duty of such Stipendiary Magistrate or other officer to withhold such license and await further instructions.

7. In every case in which a license is granted under this Chapter, the person to whom the same is granted shall also give bond to the Minister of Finance and Customs of this Colony, with two sufficient securities in the sum of not less than one thousand dollars or more than two thousand dollars each, containing the condition that the terms of the license shall in all respects be complied with; and in the case of a license to export to a foreign country, that satisfactory proof of the landing of the cargo in such foreign country will be furnished within a stated period, and the forfeiture of the penal sum under such bond shall be in addition to any other penalty, forfeiture or punishment which may be imposed for the same offence under this Chapter.

8. The forms of the licenses, affidavits and bonds, above provided, shall be prescribed by the Governor in Council.

9. Any person who shall violate any of the provisions of section one of this Chapter, or any of the sub-sections thereof; or,

- (1) Use, dispose of, or deal with any bait fishes otherwise than in accordance with the terms of the affidavit made upon application for a license, or with the terms of such license; or,
- (2) Make any untrue statement in any affidavit upon application for a license under this Chapter; or,
- (3) Obtain a license under this Chapter by means of any false statement or misrepresentation, or by the suppression or concealment of any material fact,

shall be liable for every first offence to a penalty not exceeding one thousand dollars or imprisonment for a period not exceeding twelve months.

Any person convicted of a second or subsequent offence under this Chapter shall, on conviction, be subject to imprisonment with hard labor for a period of not less than twelve months .

10. In addition to the punishment prescribed by the foregoing section, the convicting Magistrate may order the confiscation and sale of the herring, caplin, squid or other bait fishes which have been sold, purchased, hauled, taken, conveyed or exported in violation of the provisions of this Chapter, or the terms of any license thereunder, or of the boat or vessel on board of which such bait fishes shall be found to have been unlawfully shipped, conveyed or exported, and the forfeiture of any license held by the offender.

11. Any person who shall sell any herring, caplin, squid or other bait fishes for the purpose of shipping or putting on board of any ship or vessel, or for the purpose of exportation to any person not holding or producing a license under this Chapter, shall be liable to a fine not exceeding five hundred dollars, or to imprisonment not exceeding three months.

12. In any prosecution under the next preceding section, the onus of proof that the bait fishes were not intended for shipment or for exportation shall rest upon the party accused: Provided there be proof of a sale under such circumstances as shall be consistent with a reasonable presumption that shipment or exportation was intended.

13. The Governor in Council may, from time to time, appoint special commissioners for the purpose of enforcing the provisions of this Chapter.

14. Any such commissioner, or any Justice of the Peace, Sub-collector, preventive officer, fishery warden or constable may board and examine and search any boat or vessel suspected of having on board or of conveying or exporting bait fishes contrary to the provisions of this Chapter, or of any license granted thereunder; and in case any such commissioner, Justice of the Peace, Sub-collector, preventive officer, fishery warden, constable or the crew of any vessel employed by the Government, shall make a signal by hoisting the international signal B. M. I., meaning "Heave to, I will send a boat," and firing a gun, or by dipping at the main peak three times the flag with the badge of the Colony, as prescribed by the Colonial regulations, it shall be the duty of the owner, master or person managing or controlling such vessel to heave to until such commissioner, Justice, Sub-collector, fishery warden or constable shall have boarded and examined such last-named vessel; and in case of

such owner, master or person managing or controlling such last-named vessel omitting to heave her to, or obstructing or omitting to afford facilities for such commissioner, Justice, Sub-collector, preventive officer, fishery warden or constable in boarding and examining such vessel, he shall be subject to a penalty not exceeding five hundred dollars or to imprisonment for a term not exceeding three months. The master of any vessel who shall refuse or unreasonably delay in obeying such signal may be arrested and brought before a Stipendiary Magistrate, and his vessel may be seized and held by any such commissioner, Justice, Sub-collector, preventive officer, fishery warden or constable until an adjudication shall have taken place, upon a complaint under this section.

15. Any person found hauling, catching, taking, purchasing, selling, shipping or conveying any bait fishes, or any person having any such fishes in his possession, or the master, owner or crew of any boat or vessel on board of which any bait fishes may be found, may be examined on oath by a Justice of the Peace, Sub-collector, preventive officer, fishery warden or commissioner, appointed under this Chapter, as to the quantity and kind of bait fishes in his possession or on board of such boat or vessel, the purpose for which such bait fishes are intended to be used or as to the place to which such bait fishes are intended to be conveyed or exported, and upon his refusing to answer, or answering untruly, or failing to produce a license under this Chapter, or having such license, being found to have violated or failed to comply with the provisions thereof, such Justice, Sub-collector, preventive officer, fishery warden or commissioner may seize the boat or vessel on board of which such bait fishes shall have been hauled or caught, or put, kept, shipped, carried, conveyed or exported or on board of which the same may have been found, her tackle, apparel, furniture and outfit, and the said bait fishes so found as aforesaid, and may hold the same until an adjudication shall have been had, upon a complaint in relation to such alleged offence.

16. In any such case as mentioned in the next preceding section, any officer therein authorized to seize any boat or vessel, and any constable or peace officer then present, shall have power, by direction of any such officer authorized as aforesaid, and without any warrant or complaint upon oath, to arrest any person found committing or omitting to do any of the acts for or on account of which such boat or vessel may be seized, and to detain him in custody until an adjudication shall have taken place as before provided.

17. In any prosecution under this Chapter, the fact of shipping,

putting or having bait fishes on board of any boat or vessel, shall be *prima facie* evidence of the same having been so shipped, put, had or conveyed for the purpose of exportation, and the refusal or failure to produce a license upon being called upon so to do, shall be *prima facie* evidence of such bait fishes having been shipped, put, conveyed or exported without a license; and any exportation, or intended exportation of bait fishes shall in the absence of proof to the contrary, be held to be an exportation or intention to export for bait purposes.

18. All offenders against the provisions of this Chapter may be prosecuted and convicted, and all fines, forfeitures, penalties, orders for confiscation, and other punishments imposed, recovered and made in a summary manner before a Stipendiary Magistrate. In the event of the prosecution of an offender who would not be liable to or ordered to pay a fine, then the reasonable expenses of the prosecutor, including a fair amount for his time and labor expended in and about such prosecution shall, on the certificate of the Magistrate who heard the case, be paid to the prosecutor by the Minister of Finance and Customs.

19. If any person convicted under this Chapter shall feel himself aggrieved by such conviction, he may appeal therefrom to the then next sitting of His Majesty's Supreme Court holden in or nearest to the place where such conviction shall have been had: Provided notice of such appeal and of the cause and matter thereof be given to the convicting Magistrate, in writing, within seven days next after such conviction, and the party desiring to appeal shall also, within fourteen days after such notice, give and enter into recognizance, with two approved sureties, before the convicting Magistrate, conditioned for the appearance of the person convicted at such next sitting of the Supreme Court on the first day of such sitting, for the prosecution of the appeal with effect and without delay, to abide the judgment of the Court thereon and for the delivery and surrender of any vessel or other property ordered to be confiscated, and to pay such costs as the Court shall award. Any person who shall be convicted and imprisoned by any such Magistrate for an offence against this Chapter, and who shall have given such notice of appeal, and shall have entered into such recognizance with approved sureties, may be discharged from prison, in which case the recognizance shall be further conditioned for the surrender of the convicted party, on the first day of such next sitting of the Supreme Court, to the Sheriff of Newfoundland.

20. No proceeding or conviction by, or order of any Justice or other officer under this Chapter, shall be quashed or set aside for any in-

formality, provided the same shall be substantially in accordance with the intent and meaning of this Chapter.

21. In this Chapter the word "vessel" shall include any boat or ship registered or not registered, jack, skiff, punt or launch, whether propelled by sails, oars or steam.

22. Nothing in this Chapter shall affect the rights and privileges granted by treaty to the subjects of any state in amity with His Majesty.

23. For the purposes of this Chapter all Stipendiary Magistrates shall be deemed to be Stipendiary Magistrates for the Colony, and may exercise the jurisdiction given by this Chapter in any part of the Colony. All officers engaged in carrying out this Chapter, and the masters and crews of all vessels engaged in the said service, may severally be sworn as special constables, and shall, while engaged in carrying out this Chapter, have all the powers, authority and protection of police constables.

CHAPTER 157.

Of the Labrador Fishery.

SECTION

- 1.—Owners of vessels bringing fishermen to Labrador shall bring them back.
- 2.—Definition of owner.
- 3.—Receiver of voyage.

SECTION

- 4.—Respecting notice of intention of returning given to fishermen by owner.
- 5.—In case of loss of vessel.
- 6.—Fisherman.

1. All owners of vessels conveying fishermen to the coasts of Labrador, or to any of the islands adjacent thereto, and all persons receiving the voyage of fishermen so conveyed, shall, at or before the end of the fishing season, convey or cause to be conveyed to the port in this Island where they reside, or whence they sailed, or as near thereto as may be practicable, all such fishermen as aforesaid; and any person or persons who shall, after the last day of October in any year, carry or convey any fishermen from any part of the coast of Labrador, or the islands adjacent thereto, to any port in this island, shall be deemed to have so carried and conveyed the said fishermen at the request of the owner of the vessel in which said fishermen may have been conveyed to the Labrador, or the islands adjacent thereto, and of the receiver of the voyage as aforesaid, and shall be entitled to receive from such owner of vessel and receiver of voyage or either of them the cost of such conveyance.

2. In every case where a vessel shall be *bona fide* hired or chartered by the owner to another person, such person shall, for the purposes of this Chapter, be deemed to be the owner of such vessel and become and be liable to the provisions of section one of this Chapter, and the true owner shall not be liable to the provisions of this Chapter in respect of persons conveyed to Labrador in such vessel.

3. The words "receiver of the voyage" shall mean only the current supplier being the receiver of the voyage, and not other persons who may be the *bona fide* purchasers thereof from the planter or fisherman.

4. In every case where the owner, under this Chapter, shall have given at least ten days' notice to such fishermen as he may have conveyed to Labrador, or to the masters or employers of such fishermen, of his intention to proceed on the voyage homeward, and the fishermen, so notified, refuse or neglect to return or be conveyed homeward, such owner shall

not be liable under the provisions of this Chapter: Provided that in case any such fishermen shall be subsequently conveyed by any other person from Labrador, or any of the islands adjacent thereto, to any port in this Island, the owner or hirer of the vessel, as the case may be, in which such fishermen may have been conveyed to Labrador, or to any of the islands adjacent thereto, shall, to the extent of the freight charged such fishermen by such owner or hirer, be liable to the said person who may so convey such fishermen from the Labrador, or islands adjacent thereto, to this Island.

5. In every case where a vessel may be lost upon the Labrador coast, and the owner or hirer of the vessel is unable to provide for the return of the fishermen taken to Labrador by him, such owner shall not be liable beyond twenty-five cents per quintal upon the fish, four dollars per tun upon the oil, and twenty-five cents per barrel upon the herring of such fishermen.

6. In this Chapter the words "fishermen" or "fisherman" shall be taken to include all or any of the persons, male or female, engaged in any manner whatsoever in the catching, curing, drying, or shipping of fish on the coasts of Labrador or on any of the islands adjacent thereto.

CHAPTER 158.

Of the Prohibition of Steam Vessels in the Labrador Fishery.

SECTION

1.—Fishery on Labrador in steamers prohibited.

SECTION

2.—Recovery of penalties.

3.—Appeal.

4.—Saving treaty rights.

1. It shall be unlawful to prosecute the codfishery within three marine miles of the coast of Labrador, and the islands adjacent thereto, in vessels propelled by steam, under a penalty not exceeding five thousand dollars, nor less than one thousand dollars. Obtaining and distributing bait, and conveying crews, gear and outfits to the said coast shall not be held to be prosecuting the codfishery.

2. Penalties hereunder may be sued for and recovered in a summary manner before a Stipendiary Magistrate.

3. Either party to an action may appeal from the judgment of a Stipendiary Magistrate to the Supreme Court, on giving security to abide the result.

4. Nothing in this Chapter shall affect the rights and privileges granted by treaty to the subjects of any State or Power in amity with His Majesty.

CHAPTER 159.

Of Bank Fishermen.

SECTION

- 1.—Definitions.
- 2.—No clearance for trawler lacking certain safety appliances.
- 3.—Penalty on owner and master of trawler.
- 4.—Compass, food and water on dories.
- 5.—Insurance premium payable by crew and owner.

SECTION

- 6.—Deposit of premiums in Customs Trust Fund.
- 7.—Insurance payment on death.
- 8.—Insurance money not subject to attachment, etc.
- 9.—Application of fines.
- 10.—Dispensing with probate, etc.

1. In this Chapter, unless the context otherwise requires, the following words and expressions shall have the meaning hereinafter respectively assigned to them, namely:

“Trawler” shall mean any schooner or other vessel of twenty-five tons or upwards, prosecuting out of any port in this Colony any fishery by means of trawls or bultows, and shall include vessels propelled by steam or other mechanical power.

“Insurance Fund” shall mean the aggregate of the premiums received by the Minister of Finance and Customs under this Chapter together with the interest, if any, arising from the investment thereof as hereinafter provided.

“Insured Fisherman” shall mean any member of the crew of a trawler whose master and owner have complied with the provisions of section five of this Chapter.

“Legal representative” shall mean any person or persons who shall satisfy the Minister of Finance and Customs that he or she is or they are entitled to receive the amount of the insurance money payable under this Chapter.

2. No clearance for the fishery from any port in this Colony shall be granted to any trawler unless the Customs’ Officer whose duty it is to grant such clearance shall be satisfied by the master of such trawler or otherwise that such trawler has on board—

- (1) Three life-buoys, to be kept on deck;

- (2) A sufficient life-belt for every person employed on such trawler in the prosecution of such fishery;
- (3) A reliable compass for every dory carried on such trawler;
- (4) An approved patent fog alarm; and
- (5) A medicine chest containing a sufficient supply of medicines; and the sufficiency of such supply shall be certified in writing by a medical practitioner or druggist, or otherwise proved to the satisfaction of such Customs' officer.

3. The owner of any trawler who shall knowingly permit such trawler to proceed to the fishery without having on board the appliances required under section two of this Chapter, and the master of any trawler who shall proceed to the fishery without having on board such appliances, or who shall wilfully or negligently fail to maintain the same in good condition on board during the continuance of the voyage, shall be guilty of an offence triable in a summary manner before a Stipendiary Magistrate or a Justice, and shall, on conviction, be liable to a fine of one hundred dollars, and in default of payment, to imprisonment for one month.

4. The master of every trawler, when on the Banks, shall see that each dory, before leaving his said trawler for any purpose whatever, has on board a reliable compass and a hermetically sealed supply of food and water sufficient for two men for at least four days. A breach of this section shall be an offence triable in a summary manner before a Stipendiary Magistrate or a Justice. The accused shall, on conviction, be liable to a fine of twenty-five dollars for each offence, and in default of payment, to imprisonment for seven days.

5. No clearance for the fishery from any port in this Colony shall be granted to any trawler until the master thereof shall have deposited with the chief Customs' officer at the port of clearance the premium or sum of fifty cents for the insurance of each member of his crew under this Chapter, which sum shall be a first charge upon the wages or share of each member of such crew, nor until the owner thereof shall have deposited with such officer for the purpose aforesaid the sum of twenty cents in respect of each member of the said crew.

6. The amount of all such premiums deposited with outport Customs' officers under the provisions of section five of this Chapter, shall be forthwith forwarded to the Minister of Finance and Customs, who

shall deposit in some bank approved by the Governor in Council, to the credit of a fund known as the "Customs' Trust Fund," all premiums received by him under the provisions of this Chapter.

7. If any insured fisherman shall lose his life while engaged in the fishery carried on by the trawler of whose crew he is a member, or shall, by reason of his being cast away or suffering some other accident while engaged in such fishery, die before the expiration of six months after the completion of the voyage, then and in any of such cases his legal representative, upon giving to the Minister of Finance and Customs satisfactory proof of the cause of such death, shall receive out of the Insurance Fund, at the end of the current financial year of the Colony, a sum to be determined by dividing the said fund by the number of deaths occurring during the said year among all the insured fishermen, but not in any case to exceed the sum of eighty dollars in respect of any one death.

8. The interest of the legal representative of an insured fisherman in the Insurance Fund shall not be liable to attachment or execution issued out of any Court.

9. All fines imposed under or by virtue of the provisions of this Chapter shall be paid over to the Minister of Finance and Customs, and by him be paid into the credit of the Customs' Trust Fund for the purposes of the Insurance Fund.

10. The insurance money payable under the provisions of section seven of this Chapter may be paid by the Minister of Finance and Customs to the legal representative of an insured fisherman without requiring such legal representative to obtain probate to the will or letters of administration to the estate of such fisherman, and having paid the amount of such insurance, the said Minister shall not be liable for any claims arising out of or on account of such payment, anything in law or equity to the contrary notwithstanding.

CHAPTER 160.

Of the Culling of Codfish.

SECTION

- 1.—Culler of cod-fish must be sworn.
- 2.—Form of oath.
- 3.—Culler must obtain license under certain circumstances.
- 4.—How license obtained.
- 5.—How long license shall remain in force.
- 6.—Penalty for contravention.

SECTION

- 7.—Penalty for contravention.
- 8.—Culler must be sworn and licensed under certain circumstances.
- 9.—Arbitration in case of dispute.
- 10.—Stipendiary Magistrate, &c., must transmit list to Colonial Secretary.
- 11.—Who are empowered to grant licenses.
- 12.—Mode of recovery of penalty.

1. No person shall cull codfish as between vendor and vendee in a place or places under the operation of this Chapter, unless such person shall have been previously sworn before a Stipendiary Magistrate or Justice of the Peace, faithfully and without fear, favour or affection, to discharge the duties of a fish culler.

2. The oath to be taken by such culler shall be in the form of schedule A to this Chapter.

3. No person shall cull codfish, as between vendor and vendee, in the towns of St. John's, Harbour Grace, Carbonear, Trinity, Catalina, King's Cove, Greenspond, Bonavista, Twillingate, Fogo, Burgeo, Harbour Briton, Gaultois, and such other ports or places as the Governor in Council may, by proclamation, direct, without first having obtained a culler's license from a Stipendiary Magistrate or Justice of the Peace.

4. No person shall be licensed as a culler to cull codfish, as between vendor and vendee, in any of the places that may come under the operation of this Chapter, unless upon the recommendation of three persons of known experience as cullers, which recommendation shall state that the applicant for such license is competent to perform the duties of a culler of codfish, and is a fit and proper person to be granted a culler's license under this Chapter.

5. The license to be granted as aforesaid, shall be in the form of schedule B to this Chapter: Provided that such license shall continue in force for a period of five years, and may be renewed at the expiration of that time for a like period, and so on from time to time for the number of years aforesaid. The fees for such license shall be one dollar for the

first license, and fifty cents for each renewal of license; the said fees shall be paid to the Minister of Finance and Customs for the use of the Colony.

6. Any person who shall cull codfish, as between vendor and vendee, in any of the aforesaid towns, or in any other places under the operation of this Chapter, without being the holder of a license, shall be liable to a fine not exceeding ten dollars, or in default of payment thereof to imprisonment for a period of not exceeding ten days for said offence.

7. Any person who shall accept from any vendor or vendee, by whom he shall be employed, or from any person on behalf of such vendor or vendee, any payment, reward, or gift of any kind whatsoever, for his services as a culler of codfish other than the market rate for culling codfish, shall be subject to a penalty of not exceeding fifty dollars, or in default of payment thereof, imprisonment for a period of not exceeding two months for any such offence as aforesaid contained in this section, and also shall, on conviction thereof, forfeit his license as a culler of codfish.

8. Any person who goes from Saint John's, Harbour Grace, Carbonear, Twillingate, Fogo, Greenspond, Bonavista, King's Cove, Catalina, Trinity, Harbour Briton, Burgeo, or Gaultois, to any port in this Colony and its Dependencies, in the capacity of a culler for the purpose of culling fish for export, shall be sworn and licensed, and shall otherwise be subject to the provisions of this Chapter.

9. In case of any dispute arising between a vendor and vendee as to the culling of any codfish by any licensed culler engaged in culling the fish of such vendor, such dispute shall be forthwith referred to the immediate determination of two sworn cullers, one to be appointed by the vendor or his agent, and one by the vendee or his agent, and the decision of such sworn cullers shall be final and binding between the parties; and in case the said two arbitrators cannot agree, they shall call in the assistance of a third competent person, and the decision of any two such arbitrators shall be final and binding between the parties. The fee for such arbitrament shall be one dollar to each culler and five dollars for the umpire, one-half to be paid by each party.

10. Every Stipendiary Magistrate or Justice of the Peace granting such licenses as aforesaid, shall, in each year, make out, sign, and transmit to the Colonial Secretary a statement showing the person or persons to whom such license or licenses has or have been granted, and the date of such license or licenses.

11. Stipendiary Magistrates or Justices of the Peace are hereby empowered to administer the oath, provided in schedule A to this Chapter, to applicants applying for a culler's license, in accordance with the provisions hereof.

12. All penalties under this Chapter shall be recovered upon complaint and summary conviction before a Stipendiary Magistrate, by any one who shall make such complaint and prosecute the offender to conviction.

SCHEDULE A.

Culler's Oath.

I, A. B., do solemnly swear that I will honestly, faithfully, and impartially, and to the best of my ability, cull all fish entrusted to me for culling without fear, favour, or affection of or to any vendor or vendee of such fish.

(Place,)

(Date,)

A. B.

Sworn before me, at,

thisday of19...

C. D.,

J. P., (*or as the case may be.*)

N.B.—This oath must be signed and endorsed on the culler's license.

SCHEDULE B.

Culler's License.

This is to certify that A. B., of, has been sworn before me, according to the provisions of Chapter 160 of the Consolidated Statutes, and that he is hereby licensed according to the provisions of the said Chapter for that purpose.

(Place,)

(Date,)

C. D.,

J. P., (*or as the case may be.*)

CHAPTER 161.

Of the Inspection of Pickled Fish and Fish Oils.

SECTION

- 1.—Governor in Council may appoint inspectors of pickled fish and casks; inspectors to give bonds.
- 2.—Inspectors to provide branding irons.
- 3.—Inspection, &c., to be in presence of inspector.
- 4.—Duty of inspectors; provision for packages.
- 5.—Casks to be inspected and branded.
- 6.—All pickled fish for exportation to be inspected and branded, and certificate of quantity and quality given; proviso; fish not inspected at place of packing.
- 7.—Packages, how branded or marked; casks to contain fish of same kind and quality; Inspector may separate sound and unsound fish and condemn unsound; inspected fish to be repacked in presence of inspector; fish may be re-inspected; owner may recover cost of re-inspection from inspector; capacity of tierce, half-tierce, barrel, half-barrel; casks to be marked with description, weight, quality of fish, name of inspector, place of inspection; date of inspection, &c.
- 8.—Inspector's fees; persons causing inspection may employ cooper; subject to directions of inspector.
- 9.—Penalty for altering inspected fish.
- 10.—Penalty upon inspector for breach of duty.

SECTION

- 11.—Governor may appoint chief inspector of pickled fish.
- 12.—His powers, duties and liabilities.
- 13.—Chapter not to apply to herring.
- 14.—Governor in Council may appoint inspectors of fish-oils; inspectors to give security.
- 15.—Provided with utensils.
- 16.—Inspecting to be in presence of inspectors.
- 17.—Duty of inspectors.
- 18.—Fish oil for exportation to Dominion of Canada to be inspected, &c.
- 19.—Governor in Council to fix standards; whale oil, seal oil, porpoise oil, cod oil, cod liver oil, herring and other oils.
- 20.—Casks to be branded.
- 21.—Definition of "fish-oils."
- 22.—Inspector's fees.
- 23.—Penalty for adulteration, &c., of inspected casks.
- 24.—Penalty for branding without actual inspection, &c.
- 25.—Recovery and appropriation of penalties.
- 26.—Granting certificates without personal inspection a misdemeanor. Punishment; appeal; hearing of appeal.
- 27.—Refiners to be licensed.
- 28.—Issue of licenses.
- 29.—Inspection before export.

INSPECTORS AND INSPECTION OF PICKLED FISH.

1. The Governor in Council may appoint inspectors of pickled fish and of casks used for packing the same, who shall give bonds in the sum of four hundred dollars, with two sureties in the sum of two hundred dollars each, to His Majesty, for the faithful discharge of their duties, and they shall be sworn before a Justice of the Peace faithfully to perform the same. Such inspectors shall be known as Fish Inspectors.

2. Such fish inspectors shall provide themselves with proper branding irons or stencil plates, for the purpose of branding or stencilling such casks as may by them be inspected, pursuant to this Chapter.

3. The inspecting, culling, classing, weighing, packing, branding, or stencilling of any fish, shall be done in the presence and sight of a fish inspector.

4. It shall be the duty of such fish inspectors to see that all kinds of split, whole, pickled, or salted fish, intended for packing or barrelling,

and submitted to them for inspection, have been cured and preserved sweet, free from taint, rust, saltburn, oil, or damage of any kind. And all fish intended for exportation, and branded or stencilled as inspected, shall be well and properly packed in good, tight, and substantial casks, which shall be made of the materials and in the manner following:

Tierces, barrels and half-barrels shall be made of sound, well seasoned, split or sawn staves, free from sap, and in no case to be of hemlock, and the heading shall be of pine, fir or spruce, free from sap, and planed on the outside, and shall be at least three-quarters of an inch in thickness.

The sawn staves shall be three-quarters of an inch, and clove staves five-eighths of an inch in thickness, and in neither case to be less than five-eighths of an inch in thickness at the bilge when dressed.

Staves for salmon, trout and mackerel barrels shall be twenty-eight inches in length, and the heads between the chimes, seventeen inches.

Tierces shall be thirty-one inches in length and nineteen and a half inches across the head.

All casks shall be hooped one-third of their whole length from each chime with sound good hoops of not less than one inch in width.

5. All casks intended to be used for packing pickled fish shall be inspected by a fish inspector, who shall brand or print the initials of his Christian name and the whole of his surname on the bung stave, which must be of hardwood. The makers of all tierces, barrels and half-barrels, shall brand, stencil or punch the initials of their christian names and their whole surnames at or near the bung staves of such tierces, barrels and half-barrels, under a penalty of twenty cents for every package not so branded.

6. All pickled fish cured for exportation shall be inspected, weighed and branded or marked in accordance with this Chapter, and a certificate stating the quality and quantity thereof so inspected, and for whom inspected, and shipped on board any vessel, shall be granted by the fish inspector free of cost. Provided that when fish are not inspected at the place of packing, the packer's name and the quality of the fish must be marked in paint, branded or punched on each barrel, half-barrel or package; and when they are inspected at the place of sale, the fish inspector shall empty out ten packages in each hundred of any lot submitted to him for inspection, and such inspection of ten packages out of every hundred shall regulate the grade of the fish so submitted for inspection.

7. The various kinds of fish to be inspected under this Chapter shall be branded or marked of the following denominations, respectively:

- (1) Salmon, to be branded or marked "No. 1," shall consist of the best and choicest kind, well split, having the blood well washed out before being salted, well cured, in the best condition, and in every respect free from taint, rust or damage of any kind.

Those to be marked or branded "No. 2," shall consist of the best salmon that remain after the selection of the first quality, and shall be good, sound, well split and cured fish in the next best condition, and in every respect free from taint or rust.

Those to be branded or marked "No. 3," shall consist of those that remain after the selection of the two first qualities, but must be free from taint.

- (2) Mackerel, to be branded or marked "Mess Mackerel," shall consist of the best and fattest mackerel, well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind; and shall be such as would have measured when whole not less than fourteen inches from the extremity of the head to the crotch or fork of the tail, and shall have the heads and tails taken off.

Those to be branded or marked "Extra No. 1," shall consist of the best and fattest mackerel, well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind, and shall measure not less than fourteen inches from the extremity of the head to the crotch or fork of the tail.

Those to be branded or marked "No. 1," shall consist of the best and fattest mackerel, well split, having the blood well washed out before being salted, well cured, in the best condition, and free from taint, rust, or damage of any kind, and shall measure not less than thirteen inches from the extremity of the head to the crotch or fork of the tail.

Those to be branded or marked "No. 2," shall comprehend the best mackerel that remain after the selection of the "Extra No. 1" and "No. 1" qualities, and shall be properly split and

washed, well cured, and in every respect free from taint, rust, or damage of any kind; and shall measure not less than eleven inches from the extremity of the head to the crotch of the tail.

Those to be branded or marked "No. 3" shall consist of good, sound mackerel, properly washed, well cured, and free from taint or rust, and shall measure eleven inches and upwards from the extremity of the head to the crotch of the tail.

Those to be branded or marked "Large No. 3" shall consist of good, sound mackerel, properly washed, well cured, and free from taint or rust, and shall measure not less than thirteen inches from the extremity of the head to the crotch or fork of the tail.

All mackerel under eleven inches in length, of good, sound quality, and free from taint and rust or damage of any kind, shall be branded or marked with the words "Small Spring," or "Small Fall" in the place of a number.

All short, sun-burnt, or ragged mackerel, of whatever class, and not otherwise defective, shall be branded or marked "No. 4."

(5) Sea trout, to be branded or marked "No. 1," shall consist of the largest, best and fattest kind, well split, and in every respect free from taint, rust or damage of any kind.

Those to be branded or marked "No. 2" shall comprehend the best trout that remain after the selection of the first quality, and shall be good, sound fish, free from rust or taint.

(6) Green cod-fish in barrels, with or without pickle, to be classed "No. 1," shall consist of the best and fattest, well split and cleansed, well cured, in first rate condition, and in every respect free from taint, salt-burn, rust or damage of any kind, and shall measure at least fifteen inches to the crotch of the tail.

Those remaining after selection of first quality, to class "No. 2," shall be sound, well cured fish, and free from taint, salt-burn, rust or damage of any kind.

(7) All other kinds of pickled fish, not enumerated therein, and cod-fish tongues, and cod-fish sounds, shall be branded or mark-

ed as such, and must be sound and well cured, free from taint, salt-burn, rust or damage of any kind.

- (8) Small fish, which are usually packed whole, with dry salt or pickle, shall be put in good casks of the size and materials required by this Chapter for the packing of split pickled fish, and shall be packed close edgewise in casks, and properly salted, with good, coarse, wholesome dry salt; and the casks shall be filled full with the fish and salt, and no more salt shall be put with the fish than is necessary for their preservation; and the casks containing such whole fish shall be branded or marked with the denomination of the fish, and a like designation as is prescribed by this Chapter in respect of the qualities of other pickled fish.
- (9) All dusty or sour fish, of whatever kind or class, shall be branded or marked with the word "rusty" or "sour," in addition to the other brands or marks.
- (10) No foul or tainted fish, or fish mutilated for the purpose of concealing marks and appearances of illegal capture, or unsizable, shall pass inspection.
- (11) Fish known as pickled fish, that may be cured in bulk, if not inspected and certified as aforesaid, and afterwards packed in barrels, shall be branded and marked with the word "bulk," in addition to other brands or marks.
- (12) Each cask or package of fish shall contain fish of the same kind, or parts of the same kind or quality, properly packed in separate layers, and on every layer of fish so packed in the cask, a sufficient quantity of good, clean suitable salt shall be regularly placed, and in like proportions for other packages, at the discretion of the fish inspectors; and after the cask shall have been properly packed and headed, it shall be filled with clean pickle strong enough to float a fish of the kind so packed.
- (13) Should it appear to the fish inspector that a portion of the fish inspected by him is sound, and another portion unsound, he shall separate the sound from the unsound, repack the sound fish and brand or mark the same according to its quality; and such portion as he judges incapable of

preservation, he shall condemn as bad, and mark "refuse," in addition to other marks.

(14) If any casualty renders it necessary to repack inspected fish, it shall in all cases be done by and in the presence of the fish inspector; and any other person attempting to brand or mark the same shall be liable to a penalty of not more than twenty dollars for every such offence.

(15) When any fish, branded by any fish inspector, proves unequal in quantity and quality to that which may be indicated by the brand or mark, or deficient in any of the requisites prescribed by this Chapter, the owner or purchaser may cause the same to be re-inspected; and if it appear that the defect arose from the condition of the fish, or the bad quality of the cask, or the packing or pickling of the fish at the time of the inspection, he may recover the cost and charges of such re-inspection from the fish inspector who branded or marked the same.

(16) Each tierce shall contain three hundred pounds, and each half tierce one hundred and fifty pounds; each barrel shall contain two hundred pounds, and each half-barrel one hundred pounds. In each of the above instances the weight shall be clear avoirdupois exclusive of salt and pickle.

(17) There shall be branded or marked on the head or butt of each cask of pickled fish, in plain, legible letters, after the same has been inspected, classed, weighed and packed, in accordance with this Chapter, the description of the fish, the weight and quality contained in the package, the initials of the christian name or names, and the whole surname of the inspector by whom the fish was inspected, and the name of place where he acts as inspector, and the month and the year of inspection.

8. The fish inspector, who shall inspect and brand or mark any cask or package of pickled fish in accordance with the provisions of this Chapter, shall be entitled to fees at the following rates, which shall be paid by the person who employed him:—

(1) For each tierce of salmon or sea trout, fifteen cents.

(2) For each half-tierce of salmon or sea trout, ten cents.

- (3) For each barrel of salmon or sea trout, ten cents.
- (4) For each half-barrel of salmon or sea trout, five cents.
- (5) For each barrel of mackerel, ten cents.
- (6) For each half-barrel of mackerel, five cents.
- (7) For every tierce, empty, one cent.
- (8) For every half-tierce, empty, one cent.
- (9) For every barrel, empty, one cent.
- (10) For every half-barrel, empty, one cent.

The foregoing rates shall be reckoned exclusive of salt, pickle, cooperage, storage, and labor employed in washing, rinsing, cleansing, nailing, and repacking, and pickling any fish.

Provided always that any person causing his fish to be inspected may employ, at his cost and charges, a cooper to attend upon and assist the fish inspector in the performance of his duty, in which case the fish inspector shall not be allowed any charge for cooperage; and the cooper so employed shall be governed and guided solely by the directions which he receives from the fish inspector, with respect to any fish by him inspected, and not by any other person whomsoever.

9. Any person who shall, in or from any cask, intermix, take out or shift any inspected fish, branded or marked, as aforesaid, or put therein other fish, shall forfeit and pay a penalty not exceeding twenty dollars for each cask.

10. If the fish inspector shall brand or mark any cask the contents of which he has not duly inspected according to the provisions of this Chapter, or if he shall permit any other person to use his brands or marks in violation or evasion thereof, such fish inspector and other person so offending, shall each forfeit and pay, for every cask so branded or marked, a sum not exceeding ten dollars, and such fish inspector shall be removed from his office.

CHIEF INSPECTOR OF PICKLED FISH.

11. The Governor in Council may appoint a chief inspector of pickled fish, and of casks used for packing the same, to whom all fish inspectors appointed under this Chapter shall be subordinate.

12. Such chief inspector shall have and exercise all the powers conferred upon fish inspectors appointed under this Chapter, and shall be subject to all the liabilities and penalties hereby imposed on such fish inspectors, and in addition to such powers he shall have power and authority to re-inspect any number of packages of pickled fish or casks as may have been inspected by any of the said fish inspectors not exceeding the proportion of ten to every one hundred of such packages or casks; and in case he shall find any pickled fish or casks branded or marked contrary to the provisions of this Chapter, or that any or either of the said fish inspectors has been guilty of a breach of the provisions thereof, it shall be the duty of the said chief inspector to proceed against the fish inspector who shall have so wrongfully branded or marked such pickled fish or casks, or who shall have been guilty of a breach of any of the provisions of this Chapter for the penalties herein provided and in manner herein prescribed: Provided that in case the number of packages of such pickled fish or casks so re-inspected shall be greater than ten or less than twenty, or greater than twenty and less than thirty, or otherwise, as the case may be, such chief inspector shall have power and authority to re-inspect two or three, and not one or two, of such packages or casks, and so on in proportion as the case may be.

13. None of the provisions of this Chapter shall apply to the curing, packing, inspecting or marking of herrings.

INSPECTORS AND INSPECTION OF FISH OILS.

14. The Governor in Council may appoint inspectors of fish oils, and of casks containing the same, who shall give bonds in the sum of two hundred dollars, with two securities in the sum of one hundred dollars each to His Majesty for the faithful discharge of their duties, and they shall be sworn before a Justice of the Peace faithfully to perform the same. Such inspectors shall be known as Oil Inspectors.

15. Such oil inspectors shall provide themselves with proper branding irons or stencil plates, for the purpose of branding or stencilling such casks as may by them be inspected, pursuant to this Chapter.

16. The inspecting, classing, and branding, or stencilling of any fish oil shall be done in the presence and sight of an oil inspector.

17. It shall be the duty of such oil inspectors to see that all kinds of fish oils submitted to them for inspection, shall be free from adulteration of every kind, and contained in good, tight, and substantial packages.

18. All fish oil, intended for exportation to the Dominion of Canada, shall be inspected and branded or marked in accordance with the provisions of this Chapter, and a certificate stating the quality thereof so inspected shall be granted by the fish inspector, free of cost.

19. The Governor in Council shall, by regulations or orders, fix and have in charge the standard of fish oils in Newfoundland, and the same shall be classified and branded or marked according to such standard, as follows:—

- (1) Whale oil shall be free from adulteration of every kind, and shall be branded as such, with the class, according to quality, appointed by standard. If number one, "Pale," if number two, "Straw"; if number three, "Brown."
- (2) Seal oil shall be free from adulteration of every kind, and shall be branded as such, with the quality per standard. If number one, "Pale"; if number two, "Tinged"; if number three, "Straw"; if number four, "Brown"; if number five, "Dark Brown."
- (3) Porpoise oil and pothead oil shall be free from adulteration of every kind, and shall be branded according to its respective description, with the quality per standard. If number one, "Pale"; if number two, "Straw"; if number three, "Brown."
- (4) Cod oil shall be free from adulteration of every kind, and shall be branded as such. First quality, "A"; second quality, "B."
- (5) Cod liver oil shall be free from adulteration of every kind, and shall be branded as such. First quality, "A"; second quality, "B."
- (6) Herring and all other fish oils shall be branded as such. First quality, "A"; second quality, "B."

20. Casks containing fish oils shall be scribed or branded with such quality: the month and two last figures of the year when inspected, the initials of the christian name, or names, and the entire surname of the oil inspector, the place of inspection, and the word "Newfoundland."

21. The designation of "Fish Oils" in this Chapter shall include whale, seal, porpoise, pothead, cod, cod liver, herring, and all other kinds of oils derived from fishes and marine animals.

22. Every oil inspector who shall inspect and brand or mark any cask or package of fish oil in accordance with the provisions of this Chapter shall be entitled to fees at the following rates, which shall be paid by the person who shall have employed him:—

- (1) For inspecting and branding each puncheon of oil, eight cents.
- (2) For inspecting and branding each hogshead of oil, six cents.
- (3) For inspecting and branding each tierce of oil, four cents.
- (4) For inspecting and branding each barrel or smaller package of oil, four cents.
- (5) The foregoing rates shall be exclusive of cooperage, labour, and storage, employed or used in connection with such inspection.

23. Any person who shall in any way tamper with any cask or package containing oil, or intermix or adulterate any oil therein when such cask shall have been branded or marked as aforesaid, or shall take thereout any oil, except for purposes of sampling, shall forfeit and pay a penalty not exceeding twenty dollars for every such cask or package.

24. If the oil inspector shall brand or mark any cask the contents of which he has not duly inspected according to the provisions of this Chapter, or if he shall permit any other person to use his brands or marks in violation or evasion thereof, such oil inspector and other person so offending, shall each forfeit and pay, for every cask so branded or marked, a sum not exceeding twenty dollars; and such inspector shall be removed from his office.

25. Penalties by this Chapter imposed, may be recovered before a Stipendiary Magistrate in a summary way, or in a Court of Record, and shall be paid one-half to the informer and the other half to the Minister of Finance and Customs for the use of the Colony; except as provided in section 27 and 29 hereof.

26. The chief inspector of pickled fish or any fish inspector or oil inspector, under this Chapter, granting a certificate for fish or oil which he shall not have personally inspected, shall be guilty of a misdemeanor, and may be tried and convicted in a summary manner, before a Stipendiary Magistrate, and shall, on conviction, be subject to imprisonment for any period not exceeding six months, or to a fine not exceeding one hundred dollars; and any person subject to imprisonment or fine under this

section may appeal from the judgment or order of such Magistrate to the Supreme Court, on giving sufficient security to prosecute such appeal, and to abide by and perform the order or decree of the said Court thereon. And on the hearing of such appeal, such Court may admit other evidence than that adduced before the Magistrate, and may confirm, vary, or set aside the judgment of such Magistrate, and make such order as to the execution of any judgment, as to such Court may seem meet. The appeal provided by this section may be heard before one Judge, sitting in the Supreme Court, either in St. John's or on circuit.

COD LIVER OIL.

27. No person shall engage in the business of refining cod liver oil in Newfoundland without having first obtained a license from the Department of Marine and Fisheries, under a penalty not exceeding one hundred dollars to be recovered in a summary manner before a Stipendiary Magistrate or a Justice by any person who shall sue for the same.

28. Such licenses shall be issued by the said Department subject to such rules and regulations as may be made by the Governor in Council in that behalf.

29. Any person who shall export from Newfoundland any refined cod liver oil without having the same first inspected and branded in accordance with the provisions of this Chapter, shall be subject to a penalty not exceeding five hundred dollars, to be recovered in a summary manner before a Stipendiary Magistrate or a Justice by any person who shall sue for the same.

CHAPTER 162.

Of the Prosecution of the Seal Fishery.

SECTION

- 1.—Interpretation section.
- 2.—Rules relating to steel steamers.
- 3.—Rules as to food, cooking, &c.
- 4.—Responsibility of owner, master, &c.
- 5.—Penalty.
- 6.—Application of sections 2, 3, 4 and 5.
- 7.—Boats.
- 8.—Crews.
- 9.—Date of clearing for fishery.
- 10.—Clearing of steel ship.
- 11.—Penalty for not clearing.
- 12.—Date of leaving for fishery.
- 13.—Second trip forbidden; penalty.
- 14.—Killing of seals before March 15th prohibited.
- 15.—Killing of seals in Gulf of St. Lawrence.
- 16.—Killing of seals on Sunday.
- 17.—Remaining on ice after dark.
- 18.—Permitting sealers to go on ice after dark.
- 19.—Hoisting on board after dark not prohibited.
- 20.—Breach of rules resulting in injury; penalty on officers.
- 21.—Searches for missing men.
- 22.—Rockets, supply of, to be carried.
- 23.—Signals when men lost on ice.

SECTION

- 24.—Recovery of penalties.
- 25.—Medical practitioner to be carried.
- 26.—Certificated officer to be carried.
- 27.—Sealer not to be placed on articles without master's consent.
- 28.—Maximum number of seals to be brought in.
- 29.—Load-line on ships.
- 30.—Guns or rifles.
- 31.—Hood seals.
- 32.—Bonus to cooking staff.
- 33.—Disposal of sick men.
- 34.—Conveyance home of sealers.
- 35.—Liability of receiver of catch.
- 36.—Steel ships—small.
- 37.—Penalty on master contravening chapter.
- 38.—Examination of sealing masters.
- 39.—Compensation for death or injury of sealers.
- 40.—Notices and procedure.
- 41.—Insurance schemes.
- 42.—Conveyance home of bodies of dead sealers.
- 43.—Sale of crew's share of seals.
- 44.—Limitation of proceedings.
- 45.—Appeal.
- 46.—Disposition of penalties.
- 47.—Short Title.

1. In this Chapter, unless the context otherwise requires, the following words shall have the meanings hereinafter respectively assigned to them, namely:—

“Ship” shall mean a steamer engaged at the seal-fishery and cleared from a port in this Colony.

“Sealer” shall mean a member of the crew of any such ship.

2. The following regulations shall apply to all steamers built of steel prosecuting the seal fishery:

- (1) The sides of the ships, where men sleep, shall be sheathed internally with wood.
- (2) Decks of iron not permanently sheathed shall be sheathed temporarily for the voyage with plank, properly secured and of sufficient thickness to prevent frost coming through.
- (3) All ships shall be fitted with portable iron frame berths for sleeping accommodation of the crew.

- (4) The companion-way and hatches shall be boarded in to protect men from draughts and weather. All hatches shall have water-tight coverings.
- (5) The sleeping quarters of the crew shall be heated by steam pipes.
- (6) A room shall be supplied for the accommodation of sick and disabled men.
- (7) The use of rifles by the crew or any member thereof for the purpose of killing seals shall be prohibited.
- (8) Wherever practicable a medical practitioner shall be carried in each ship.

3. The following regulations shall apply to all steamers prosecuting the seal fishery:

- (1) In addition to the food usually supplied, not less than one pound of soft bread shall be served out to each member of the crew three times each week;
- (2) Beef, pork, potatoes and pudding shall be supplied for dinner three times each week;
- (3) For breakfast stewed beans and fish brewse shall be supplied alternately;
- (4) Soup shall be supplied on Saturdays, in which onions, potatoes and turnips shall be ingredients.
- (5) Fresh beef shall be supplied to each member of the crew once each week, and when fresh beef is not available through circumstances over which the owner or master of the ship has no control, canned beef shall be substituted therefor;
- (6) No person employed as cook shall be required by the captain to do any other work except such as is incidental to the work of cooking, if
 - (a) he shall personally object to performing other work; or
 - (b) any five of the members of the crew shall so object;

Provided that this regulation shall not be held to in any way take from or impair the general authority of the captain over the cooks as

members of the crew, nor prevent him from ordering the said cooks to perform such work as, in his opinion, is necessary in the saving of life or for the safety of the ship.

4. It shall be the duty of the owner, master or person on whose account any steamer shall prosecute the seal fishery in any year, to observe, or cause to be observed, the regulations set forth in the two preceding sections, but the owner shall not be liable for any default for which he is not personally responsible.

5. The owner or master of any steamer offending against any of the regulations set forth in sections 2 and 3 shall be liable, for every offence against section 2, to a penalty not exceeding \$500, and for every offence against section 3, where such offence shall arise from any act, neglect or default of such owner or master, after his attention has been called to such offence, to a penalty of not less than twenty-five dollars and not exceeding five hundred dollars, to be recovered in each case in a summary manner by any member of the crew of such steamer who shall sue for the same before a Stipendiary Magistrate, provided it shall be proved that complaint of any offence against section 3 was made to the master at the time it occurred and provided that written notice of such suit shall be given to the said owner or master within seven days after the arrival of the steamer at port of discharge. One half of any fine imposed under this section shall be paid over to the person or persons taking suit, and one-half to the Minister of Finance and Customs for the use of the Colony.

6. The provisions of sections 2, 3, 4 and 5 of this Chapter shall apply to all steamers prosecuting the seal fishery from, or bringing seals into, the Colony.

7. No boats shall be taken on board any sealing steamer for use in the seal fishery unless they have been previously inspected by the Lloyd's Surveyor and certified by him as seaworthy, and no officer of Customs shall clear any steamer for the seal fishery unless such certificate is produced before him.

8. It shall be unlawful for any steamer proceeding on a sealing voyage from any port in this Colony to have on board a greater number of men as crew than three men for every seven tons of the gross registered tonnage of such steamer, (nor more than two hundred and seventy men as crew in any case), under a penalty of twenty-five dollars for every man carried in excess of the number limited by this section.

9. No Customs officer shall clear any ship for the seal fishery from any port north of St. John's, in the case of steel ships before the 13th day of March, and in the case of wooden ships before the 11th day of March; and no Customs officer shall clear any ship from St. John's, in the case of steel ships before the 12th day of March, and in the case of wooden ships before the 11th of March, or in the case of steamers sailing for the Gulf of St. Lawrence, before the 9th day of March. Provided that, in any year in which the 12th day of March falls on a Sunday, any Customs' officer may clear any ship one day earlier than the date hereinbefore specified for such clearance.

10. No steel ship shall be cleared for the seal fishery from any port in this Colony, except St. John's or Channel, nor in any case until forty-eight hours after the time fixed for the sailing of the wooden ships. Steel ships under eight hundred and fifty tons gross shall, for the purposes of this section, be considered as wooden ships. •

11. It shall be unlawful to bring into or land in any port in the Colony any seals killed by the crew of any steamer or vessel, if such steamer or vessel has not, prior to the killing of such seals, cleared for the seal fishery from a port in this Colony in manner by law provided, under a penalty of four thousand dollars, to be recovered, in a summary manner, from the master, owner or other person on whose account such steamer or vessel shall have been sent to such fishery.

12. Wooden ships shall not depart for the fishery outside the Gulf of St. Lawrence before 8 o'clock, a.m., on the 12th day of March in each year. Steel ships shall not depart from St. John's or any port south or west thereof before 8 o'clock, a.m., on the 13th day of March each year, or any port north of St. John's before 8 o'clock on the 14th day of March in each year, under a penalty not exceeding four thousand dollars, to be recovered in a summary manner by any master-watch or other officer of any sealing steamer, or by any three members acting together of the crew of any sealing steamer suing for the same before a Stipendiary Magistrate, from the owner, master or other person on whose account such wooden or steel ship shall be sent to such fishery; provided that written notice of such suit shall be given to the accused party within forty days of the date of the arrival of the offending ship at the port of discharge; and one-quarter of any fine imposed hereunder shall be paid over to the person or persons taking the suit, and three-quarters to the Minister of Finance and Customs for the use of the Colony. Provided that, in any year in which the twelfth day of March falls on a Sunday, the dates here-

inbefore specified before which it is unlawful to sail shall be read as if the same were expressed to be the eleventh, twelfth and thirteenth days of March respectively, instead of the twelfth, thirteenth and fourteenth days of March respectively.

13. No steamer shall proceed to the seal fishery from any port of this Colony on a second or subsequent trip in any year, under a penalty not exceeding four thousand dollars, to be recovered by any person from the master, owner, or other person on whose account such steamer shall have been sent to the seal fishery: Provided that if it be shown to the satisfaction of the Collector, Sub-Collector, or other Customs' officer of the port from which the said steamer sails, that the steamer has been forced by any accident to return to port during the first trip, she shall not be deemed to have proceeded upon a second trip if she resumes her voyage to the seal fishery before the twenty-fifth day of March in any year.

14. No seals shall be killed by any member of the crew of any ship before the fifteenth day of March in any year, nor shall seals so killed be brought into any port of this Colony, or its Dependencies in any year, under a penalty not exceeding four thousand dollars, to be recovered from the master, owner or other person on whose account such steamer shall have been sent to the fishery, by any master, master-watch, or other officer of any sealing steamer, or by any member of the crew of any sealing steamer suing for the same; provided that written notice of such suit shall be given to the said owner, master, or other person within forty days of the arrival of the steamer at the port of discharge. One-fourth of any fine imposed under this section shall be paid over to the person or persons taking the suit, and three-fourths to the Minister of Finance and Customs for the use of the Colony.

15. No seals shall be killed by any member of the crew of any ship prosecuting the seal fishery in the Gulf of St. Lawrence before the 12th day of March in any year, nor shall any seals so killed be brought into any port of this Colony, under a penalty not exceeding four thousand dollars, to be recovered from the master, owner or other person on whose account such steamer shall have been sent to the fishery and subject to the proviso in the latter part of section 12.

16. No seals shall be killed by the crew of any steamer or sailing vessel, or by any member thereof, on any Sunday (that is to say from twelve o'clock on Saturday night until twelve o'clock on Sunday night), in any year, nor shall seals, so killed, be brought into any port in this Colony

or its Dependencies in any year under a penalty of two thousand dollars, to be recovered in a summary manner by any person who shall sue for the same before a Stipendiary Magistrate, from the master or such of the crew of the said steamer or sailing vessel as have violated the provisions of this section.

17. It shall be unlawful to kill any seals or to remain upon the ice in charge of any seal-pelts except between the hours from daylight to dark, and no sealer shall, without lawful excuse, be or remain upon the ice or away from his ship during any part of the period from one hour after dark to daylight, under a penalty not exceeding one hundred dollars, to be recovered in a summary manner by any person who shall sue for the same.

18. No master or other officer of any ship shall, without lawful excuse, send any sealer on to the ice or permit him to go on to the ice except between the hours of daylight and dark, or at any other time when the state of the weather is such as endangers life and limb, under a penalty not exceeding one hundred dollars, to be recovered in a summary manner by any person who shall sue for the same: Provided that the Magistrate or Justice imposing such penalty may, in addition, suspend the certificate of competency held by such officer under this Chapter for such period as he may deem proper.

19. The provisions of the two preceding sections shall not apply to the work of strapping of seals and hoisting them on board a ship; and in any prosecution under either of the said sections no conviction shall be had unless it shall be proven that a complaint was made within twenty-four hours after the commission of the offence to the master or other officer in charge of the ship, whose duty it shall be to enter the particulars of such complaint in the ship's log.

20. Any breach by the master or other officer of the provisions of section eighteen of this Chapter which shall result in the total disablement of any sealer for a period of not less than three months shall be a misdemeanour and punishable upon conviction by imprisonment for a period not exceeding one year, and any such breach which shall result in the death within twelve months thereafter of any sealer shall be a felony and punishable upon conviction by imprisonment for a period not exceeding three years.

21. Immediately upon it being made known to the master or other officer in charge of a ship that any of his men are missing he shall send

out a search party to look for them, unless in his opinion the state of the weather is such as endangers life and limb, under a penalty not exceeding one thousand dollars, to be recovered in a summary manner by any person who shall sue for the same: Provided that the Magistrate or Justice imposing such penalty may, in addition, suspend the certificate of competency held by such officer under this Chapter for such period as he may deem proper.

22. The owner of any ship who shall fail to provide such ship with an adequate supply of fire-rockets of such class and in such quantity as may be approved by the Minister of Marine and Fisheries shall be subject to a penalty of four hundred dollars, to be recovered in a summary manner by any sealer of such ship who shall sue for the same.

23. Whenever any sealer is absent from his ship without lawful excuse after dark, or in fog, mist, or falling or drifting snow, the master or other officer in charge of such ship shall, unless he has positive and trustworthy information that such sealer is safe on board some other ship, cause a prolonged blast to be sounded by his steam-whistle or other steam sound signal, at intervals of about five minutes, and in default of his so doing he shall be liable to a penalty of not less than one hundred dollars, and not exceeding four hundred dollars; and he shall also in such circumstances as aforesaid cause fire-rockets to be discharged at suitable intervals, during the hours of darkness, unless the weather is such as to prevent such rockets from being visible from the ice, and in default of his so doing he shall be liable to a penalty of not less than one hundred dollars and not exceeding four hundred dollars.

24. The penalties prescribed in the preceding section may be recovered in a summary manner by any sealer of the said ship who shall sue for the same; and the Magistrate or Justice imposing such penalty may, in his discretion, in addition require the delivery up of the offending officer's certificate of competency under this Chapter, and shall cancel the same, and such officer shall thereafter be incapable of receiving a certificate of competency under this Chapter.

25. No ship carrying more than one hundred and fifty sealers shall be cleared for the seal fishery unless the Customs' officer granting such clearance is satisfied that she carries with such crew a competent medical practitioner: Provided that this requirement may be dispensed with on the production of a certificate from the Minister of Marine and Fisheries that the services of a competent medical practitioner cannot be obtained upon reasonable terms.

26. No ship shall be cleared for the seal fishery unless she has on board in some capacity a person holding a certificate as master or mate which complies with section six of Chapter one hundred and sixty-nine of the Consolidated Statutes of Newfoundland (Third Series) entitled "Of Certificates to Masters and Mates"; provided that this requirement may be dispensed with by the Customs' officer granting such clearance in any case in which he is satisfied that the services of such a certificated person cannot be obtained.

27. No sealer shall be placed on the articles of his ship without the approval of the master of such ship.

28. It shall be unlawful for any ship to bring into any port in this Colony in any one seal-fishing season more than thirty-five thousand seals, and any surplus above that number shall be confiscated by the Minister of Marine and Fisheries, and sold, and the proceeds thereof shall be paid over to the Marine Disasters Fund.

29. It shall be lawful for the Minister of Marine and Fisheries to cause all ships to be surveyed and a special load-line marked thereon for the purposes of the seal fishery, and no ship shall be loaded below the load-line so fixed, under a penalty not exceeding two thousand five hundred dollars, to be recovered from the master of such ship in a summary manner in an action in the name of the Minister of Marine and Fisheries, whose duty it shall be to see to the enforcement of this section. Any penalty recovered under this section shall be paid to the Marine Disasters Fund.

30. (1) No owner of a ship shall put on board or authorize the putting on board said ship of more than two guns or rifles, under a penalty not exceeding one thousand dollars, to be recovered from such owner in a summary manner by any person who shall sue for the same; and any other person who shall bring or put on board such ship any gun or guns, rifle or rifles, shall be subject to a similar penalty.

(2) No person on board any ship shall kill any seal by means of a gun or rifle under a penalty of one hundred dollars for every seal so killed, to be recovered from the master of such ship in a summary manner by any person who shall sue for the same.

31. It shall be unlawful for any ship to bring into any port of this

Colony any hood-seals between the tenth day of March, one thousand nine hundred and seventeen, and the thirtieth day of April, one thousand nine hundred and twenty, under a penalty of one hundred dollars for every seal so brought in, to be recovered in a summary manner from the master of the ship bringing in the same by any person who shall sue for such penalty.

32. If during the voyage the work of the cooking staff has been satisfactory to the owner of the ship, the said owner shall at the end of the voyage pay to the chief cook a bonus of twenty dollars, and to each of the assistant cooks a bonus of fifteen dollars.

33. Sick and disabled men on wooden ships shall be transferred, when possible, to a ship carrying a physician. No master shall refuse to accept such sick or disabled men on board his ship under a penalty not exceeding one hundred dollars, unless such persons are suffering from any contagious disease.

34. If any member of the crew of any sealing steamer is paid off at the end of the voyage with a balance insufficient to pay his fare to his home, the owner of such steamer shall be liable to pay to such sealer such sum not exceeding four dollars as when added to such balance will make it sufficient for the payment of such fare.

35. The purchaser of seals within this Colony, caught or taken by the crew of, or on board, any ship or vessel, the registered owner of which is domiciled without the jurisdiction of this Colony, shall be liable to pay the shares or wages of all the crew of the said ship or vessel and the crew, or any of them, may recover the same by action against the purchaser as such, provided however, that such purchaser shall not be liable to pay the claims of any such member of the crew who shall not have prosecuted the said claim within sixty days from the passing of the said seals into the hands of the said purchaser.

36. Steel ships under 850 tons gross shall, for the purpose of this Chapter, except as provided in section 2 hereof, be considered as wooden ships.

37. It shall be unlawful for the master of any steamer which shall have violated any of the provisions of this Chapter to be employed to command a steamer at the seal fishery for two years after conviction for any offence hereunder, under a penalty of one thousand dollars, to be recovered from such master as hereafter provided, and no Customs' officer

shall clear any ship for the seal fishery, with such person as master, within the period aforesaid.

38. The Governor in Council shall appoint a Board of Examiners, consisting of three persons having each not less than ten years' experience as masters of sealing steamers. The said Board shall make rules and regulations governing the examination of all persons intending to prosecute the seal fishery in steamers as master, second hand, or master-watch which rules and regulations shall be approved by the Governor in Council, and shall have power to examine such persons and to grant certificates. No person shall go to the seal fishery as master, a second-hand or master-watch without a certificate of competency from the Board of Examiners under a penalty of five thousand dollars, to be recovered in a summary manner from the owner of the ship in which any such person shall sail, by any person who shall sue for the same. The Governor in Council shall make rules and regulations as to fees to be paid such Board of Examiners, and as to fees to be paid by masters, second-hands or master-watches in relation to such examinations: Provided that this shall not apply to any master, second-hand, or master-watch, who has been at the seal fishery for two consecutive years previous to 1917, in any of the said respective capacities. And the said Board shall furnish free of cost certificates of competency to all such persons upon satisfactory proof of their having been at the seal fishery as aforesaid.

39. (1) Whenever any injury from exposure on the ice is suffered by any sealer who has not returned to his ship within one hour after dark, the owner of such ship shall be liable to pay to him, or to his dependents, if death results from such injury, compensation as hereinafter provided, subject however, to the exceptions hereinafter contained.

(2) Where death results from the injury, and the sealer leaves any dependents wholly or partially dependent upon his earnings, the amount of compensation under this Chapter shall be the sum of one thousand dollars: Provided that the amount of any weekly payments made under this Chapter, and any lump sum paid in redemption thereof, shall be deducted from such sum.

(3) Where total or partial incapacity for work results from the injury, the amount of compensation shall be a weekly payment during the incapacity not exceeding fifty per cent. of the sealer's average weekly earnings during the previous

twelve months such weekly payment not to exceed five dollars: Provided that in case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the sealer's average weekly earnings before the injury, and the average weekly amount which he is earning or able to earn in some suitable employment or business after the injury. When any weekly payment has continued for not less than six months the liability therefor may, on the application of the owner of the ship, be redeemed by the payment of a lump sum, to be settled, in default of agreement, by the Supreme Court or a Judge thereof, and such lump sum may be ordered to be invested or otherwise applied in manner similar to that provided in respect of sums payable under the Workmen's Compensation Act: Provided that said weekly payments and lump sum together shall not exceed one thousand dollars.

- (4) Any sealer suffering injury as aforesaid, and where death results from the injury, his dependents may proceed in the Supreme Court either by a personal action against the owner of the ship or by an action *in rem* against the ship on the Admiralty side of the Court, for the recovery of compensation as aforesaid, and shall have a lien therefor upon the ship and her cargo in like manner and with the same priority as in the case of claims for seamen's wages. All compensation recovered under this Chapter by dependents of an injured sealer shall be invested and distributed in manner similar to that provided with respect to sums payable under the Workmen's Compensation Act. The costs of all proceedings for the recovery of compensation under this Chapter shall be in the discretion of the Court or Judge.
- (5) No claim for compensation shall arise under this Chapter in any case in which the injury is attributable to the serious and wilful misconduct of the sealer himself, or in which the injury was suffered while he was absent from his ship on private business or for pleasure, and not in the course of his employment as a sealer.
- (6) Where a sealer has given notice under section 40 of this Chapter he shall, if so required by the owner of the ship, submit himself for examination by a duly qualified medical practitioner provided and paid by such owner, and if he re-

fuses to submit himself to such examination, or in any way obstructs the same, his right to compensation, and to take or prosecute any proceedings under this Chapter in relation to compensation, shall be suspended until such examination has taken place.

- (7) Any sealer receiving weekly payments under this Chapter shall, if so required by the owner of the ship, from time to time submit himself for examination by a duly qualified medical practitioner, provided and paid by such owner. If the sealer refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payment shall be suspended until such examination has taken place.

40. Proceedings for the recovery of compensation for injury shall not be maintainable unless notice of the injury has been given as soon as practicable after the happening thereof, and before the sealer has left the ship after the conclusion of the voyage, and unless the claim for compensation with respect to such injury has been made within six months from the date of the occurrence of the injury or, in case of death, within six months of the time of death and within two years from the date of the injury; provided always that

- (1) The want of notice or any defect in or inaccuracy in such notice shall not be a bar to the maintaining of such proceedings if it is found in the proceedings for the settlement of the claim that the ship is not, or would not, if an amended notice were then given and the hearing postponed, be prejudiced in its defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the Colony or other reasonable cause; and
- (2) The failure to make a claim within the period above specified shall not be a bar to the maintenance of such proceedings if it is found that the failure was occasioned by mistake, absence from the Colony or other reasonable cause.

41. If the Governor in Council, after taking steps to ascertain the views of the owner and crew of the ship, is satisfied that any scheme of compensation, benefit or insurance for the sealing crew of any ship, whether or not such scheme includes other ships and their crews, provides compensation not less favourable to the sealers and their dependents

than the compensation provided in section 39 of this Chapter, and that when the scheme provides for contribution by the sealers, it confers benefits at least equivalent to those contributions, in addition to the benefits to which sealers would have been entitled under this Chapter, and that a majority of the sealers to whom the scheme is applicable are in favour of such a scheme, the owner of the ship may contract with any of the sealers employed by him that the provisions of such scheme shall be substituted for the provisions of this Chapter, and thereupon the ship and its owner, except as hereinafter provided, shall be liable only in accordance with such scheme; but, save as aforesaid, this Chapter shall apply notwithstanding any contract to the contrary made after the commencement of this Chapter.

42. In every case in which a sealer shall die while on the articles of his ship, it shall be the duty of the owner of such ship, at his own cost, to cause the body of such sealer to be decently coffined and conveyed to such sealer's home.

43. It shall be the duty of the second-hand and master-watches of each ship to sell to the highest bidder the crew's share of the seals brought in by such ship: Provided that if such second-hand or master-watches fail to perform the duty hereby imposed upon them a majority of the said crew may appoint an agent to perform such duty in their stead. Any agreement made under this section by such second-hand, master-watches or agent, shall be in writing, and shall for all purposes be absolutely final and binding between the parties after the ship has begun discharging her seals.

44. No person shall be liable to any penalty or forfeiture provided by this Chapter unless some prosecution, action, or suit in respect of the offence committed shall be commenced against such person within the space of six months after the commission of such offence. All penalties by this Chapter provided may be recovered in a summary manner before a Stipendiary Magistrate or a Justice.

45. Any person against whom a penalty exceeding fifty dollars has been awarded or whose certificate has been suspended under any of the provisions of this Chapter may appeal to the Supreme Court in St. John's or on Circuit, by giving notice of such appeal within one week of his conviction, and entering into sufficient security to the satisfaction of a Stipendiary Magistrate or a Justice to prosecute such appeal without delay, and to abide by the judgment therein.

46. Except as hereinbefore otherwise provided one-fourth of all penalties recovered under this Chapter shall be payable to the person suing for the same and the other three-fourths thereof to the Marine Disasters Fund.

47. This Chapter may be cited for all purposes as "The Seal Fishery Act."

CHAPTER 163.

Of Sealers' Wages and Supplies.

SECTION

- 1.—Interpretation of word "sealer."
- 2.—Interpretation of word "supplies."
- 3.—Limitation of sealer's liability.

SECTION

- 4.—Limitation of actions by sealer.
- 5.—Share or wages of sealer not liable to attachment.

1. The word "sealer" in this Chapter shall mean any person who shall sign, and enter into service on a sealing voyage under the agreement required by Chapter 130, section 1 of these Consolidated Statutes, entitled "Of Masters and Servants."

2. The word "supplies" in this Chapter shall mean any goods or cash advanced to any sealer to be paid for out of his share of the proceeds of any sealing voyage. The word "supplier" shall mean any person who shall advance any goods or cash to any sealer to be paid for as aforesaid.

3. No sealer shall be liable or compellable to pay for supplies to any greater amount than his share of the proceeds of the voyage, on account of which such supplies are advanced, any contract to the contrary notwithstanding.

4. All actions taken by any supplier to recover any amount due by a sealer for supplies, shall be brought within six months next after the advance of such supplies and not after.

5. The share or wages of any sealer shall not be liable to attachment under *mesne* or final process, save and except for supplies under this Chapter.

CHAPTER 164.

Of the Whaling Industry.

SECTION

- 1.—Whale carcasses to be entirely manufactured.
- 2.—Disposal of carcasses.
- 3.—Towboats prohibited.
- 4.—Whales not to be pursued near fishing boats.
- 5.—Apparatus to be used.

SECTION

- 6.—Collisions—liability for.
- 7.—Accidents—liability for.
- 8.—Damage to fishing gear.
- 9.—Aliens not to be employed.
- 10.—Appeals.
- 11.—Interpretation section.
- 12.—Porpoises not included hereunder.

1. Every person engaged in the whaling industry shall provide proper and efficient means, appliances and machinery for the manufacture of the carcasses and offal of whales into marketable products, and shall manufacture all such carcasses and offal into marketable products.

2. The Governor in Council may, from time to time, make such rules and regulations as may be deemed necessary for the disposal of such portions of the carcasses of the whales brought to any factory or premises, or to any part of this Colony, as may not be manufactured into oil or other merchantable product, and for the prevention of the same becoming a nuisance or in any manner polluting the waters so as to be injurious to the public health or to the fisheries of this Colony; and such rules and regulations shall have the same effect and force as if herein enacted.

3. Boats known as "tow-boats" shall not be used by any person in the prosecution of the whaling industry, and no vessels other than the vessels from or by which the whale shall have been captured or killed, shall, by any method or contrivance, bring or tow into port any whale for manufacture or other purposes, under a penalty not exceeding two hundred dollars for each offence, to be recovered in a summary manner before a Justice of the Peace: Provided that nothing in this section shall prevent any person from towing any dead whale to land, and having it manufactured, or otherwise disposing of same in a due and lawful manner.

4. No person shall pursue, capture, shoot or kill any whale within the distance of one nautical mile from any boat or vessel at anchor or engaged in fishing, or within the distance of one-half nautical mile of any boat or vessel not at anchor or engaged in any fishing, under a penalty for each offence not exceeding two hundred dollars, to be recovered in a summary manner before a Justice of the Peace.

5. It shall be unlawful to use in the catching of whales any methods by which it depends upon chance alone whether a whale can be traced and found, or to use any contrivance for the catching or killing of whales which does not include a harpoon with a whaling line attached thereto, and fixed or fastened to the boat or vessel from which the whale is captured or killed, under a penalty for each offence of two hundred dollars, to be recovered in a summary manner before a Justice of the Peace.

6. The owner of every whaling steamer shall be liable for all damage and loss occasioned to fishermen by collision, or in avoiding collision, with any such whaling steamer, her cargo or gear, and the loss of a prospective catch of fish may be taken into account in estimating such damage.

7. The owner of every whaling steamer shall be liable for all accidents whereby injury is caused by such whaling steamer to the person of anyone not employed or being on board such whaling steamer, whether there were contributory negligence or not.

8. A whaling steamer finding, catching, or fouling any fishing gear, of which the owner is not known, shall take the same to the nearest port and give due and proper notice of the time and place of such finding, catching or fouling, under a penalty for every failure to report of fifty dollars, to be recovered in a summary manner before a Justice of the Peace.

9. It shall not be lawful to employ as an ordinary workman in or about the catching of whales or in or about the manufacture thereof into oil or other products, any person not being a British subject who has not been two years domiciled in this Colony, under a penalty for every person employed contrary to the provisions of this section of fifty dollars, to be recovered in a summary manner before a Justice of the Peace.

10. Any person who may feel aggrieved at any conviction under this Chapter may appeal therefrom to the Supreme Court, upon giving security satisfactory to the convicting Justice.

11. "Person" in this Chapter shall include any body of persons, corporate or unincorporate, and any registered company.

12. Nothing in this Chapter shall be held to apply to porpoises.

CHAPTER 165.

Of the Propagation and Protection of Oysters.

SECTION

- 1.—Governor may issue grants, &c.
- 2.—Governor may make rules, regulations, &c.
- 3.—Oysters not to be taken except under grant,

SECTION

- or under rules and regulations.
- 4.—Oysters not to be destroyed or injured.
- 5.—Penalties, &c.

1. The Governor in Council may issue leases or free grants of any coves, creeks, parts of the coast, lakes, rivers, or banks of this Colony, for the purposes of planting therein and propagating oysters, subject to such conditions, rules and regulations as the Governor in Council may promulgate.

2. The Governor in Council may also make and promulgate rules and regulations respecting the taking of oysters in any of the coves, creeks, parts of the coast, lakes, rivers or banks of the Colony.

3. No person except the grantee shall take any oysters from any place for which a lease or grant has been issued under section one of this Chapter; nor shall any person take any oysters from any of the coves, creeks, parts of the coast, lakes, rivers or banks of the Colony, except under and subject to the conditions, rules and regulations promulgated under sections one and two of this Chapter.

4. No person shall injure or destroy any oysters, or wilfully obstruct the growth of any oysters put, placed or being in any bed or place for propagation, or in any other place in this Colony.

5. Any person violating any of the provisions of this Chapter, or any of the rules or regulations promulgated by the Governor in Council thereunder shall be liable for every offence to a penalty not exceeding fifty dollars, or to imprisonment for a period not exceeding two months, to be recovered or imposed in a summary manner before a Stipendiary Magistrate.

CHAPTER 166

Of the Encouragement of Cold Storage.

SECTION

- 1.—Respecting certain guarantee to cold storage companies.
- 2.—Machinery to be exempt from duty.
- 3.—Respecting contracts for maintenance and operation of plants.

SECTION

- 4.—Location of plants to be subject to approval.
- 5.—Respecting subsidies.
- 6.—Respecting inspection.
- 7.—Rates and tolls to be subject to approval.
- 8.—Governor in Council may make rules.

1. It shall be lawful for the Governor in Council to guarantee, on behalf of the Colony, for one or more years not exceeding fifteen, the annual payment to any person, firm or company engaged in the business of cold storage and other business connected with the fisheries and bait supply of the Colony, of a sum by which the nett annual profits of such person, firm or company may be less than five per cent. on the capital invested by any such person or paid up in any such company, provided that the total amount of such guarantee to all persons or companies shall be limited to an amount of capital which shall not exceed five hundred thousand dollars. Such guarantee shall be subject to such terms and conditions, as to the annual volume of work, class of fish handled, prices to be paid for fish, countries to which fish is to be exported, and location of plants, as to the Governor in Council may appear expedient.

2. All plant, machinery, implements, apparatus, supplies and material necessary for the installation of the business of such person, firm or company shall be admitted into the Colony free of duty.

3. The Governor in Council may enter into contracts with any person, firm or company for the construction, equipment and maintenance in good and efficient working order of public cold storage plants, stores or warehouses equipped with refrigeration in Newfoundland, and suitable for the preservation of all fish bait and food products.

4. The locations, plans and specifications of every such plant, store or warehouse, its equipment and the amount to be expended thereon, shall be subject to the approval of the Governor in Council.

5. The Governor in Council may, out of any moneys appropriated by the Legislature for the purpose, grant towards the construction of any

such plant, store or warehouse a subsidy not exceeding, in the whole, thirty per cent. of the amount expended or approved of in such construction and equipment and payable in instalments as follows:—Upon such plant, store or warehouse being completed, and cold storage at suitable temperatures being provided therein, all to the satisfaction of the Minister of Marine and Fisheries, a sum not exceeding fifteen per cent. of the amount so expended; and at the end of the first year thereafter, the balance of the said thirty per cent., provided the plant, store or warehouse is maintained and operated to the satisfaction of the Minister of Marine and Fisheries.

6. The Minister of Marine and Fisheries may order and cause to be maintained an inspection and supervision of the sanitary conditions, maintenance and operation of such plant, store or warehouse, and may regulate and control the temperatures to be maintained therein, in accordance with the regulations to be made as hereinafter provided.

7. The rates and tolls to be charged in such plant, store or warehouse shall be subject to the approval of the Governor in Council.

8. The Governor in Council may make such regulations as he considers necessary in order to secure the sufficient enforcement and operation of this Chapter, and he may by such regulations impose penalties not exceeding fifty dollars on any person offending against them, and the regulations so made shall be in force from the date of their publication in the *Royal Gazette*, or from such other date as is specified in the proclamation in that behalf.

TITLE XXVI.

OF SHIPS AND SHIPPING.

CHAPTER 167

Of the Merchant Shipping Service and Desertion from the Royal Navy.

SECTION

1.—Ships registered in this Colony, their owners, &c., to be subject to the shipping laws of Great Britain, as to agreements, wages, &c.

SECTION

2.—Seamen deserting ship registered in this Colony, may be arrested and imprisoned; Proviso.
3.—Deserters from the Royal Navy.
4.—Hospital dues.

1. Sea-going ships registered in this Colony, their owners, masters and crews, and all other persons in relation thereto, when and while such ships, owners, masters, crews and persons are within this Colony shall, (so far as the same can be applied) be subject in respect of shipping and discharge, agreements, wages and effects, rights, remedies and penalties, to the law for the time being of Great Britain concerning colonial British registered ships when in the United Kingdom or out of the jurisdiction of their respective Governments, as the case may be: Provided, that no amendment or alteration of the present law of Great Britain in regard to the matters aforesaid shall, for the purposes of this Chapter, apply to this Colony until six months after the passing of such amendment or alteration, and in the meantime the law as it previously stood shall apply and be executed in this Colony.

2. Any seaman refusing to join or absenting himself without reasonable cause from any ship registered within this Colony or its dependencies, after entering into an agreement for service, as required by the provisions of the Acts relating to merchant shipping, shall be deemed guilty of an offence against the provisions of this Chapter, and may be arrested and brought before a Stipendiary Magistrate, and on conviction thereof may be imprisoned for any period not exceeding twenty-one days, unless after being arrested he consents to return to perform his duty on board such ship, in which case he may, by order of any Magistrate, if such Mag-

istrate is satisfied it ought to be done, be released from imprisonment and conveyed by the police on board the said ship. The cost of such arrest and proceedings, not exceeding five dollars, may be deducted from the wages of such seaman then due or to become due.

3. A reward of fourteen dollars shall be paid by warrant of the Governor on the Minister of Finance and Customs to any person for the apprehension of any deserter from any ship belonging to the Royal Navy, upon producing a certificate of the Commander or chief officer of any such ship, or of any Stipendiary Magistrate, stating that such deserter has been delivered to him, and all persons may apprehend such deserter without warrant.

4. The master or owner of every vessel registered in this Colony and sailing on foreign voyages shall, before the entry inwards of such vessel at the customs at the port of St. John's, pay to the Minister of Finance and Customs the sum of twelve cents per month for every seaman on board such vessel to be applied towards the support of the St. John's hospital, and the master or owner paying such amount may retain the same from the wages due to such seaman.

CHAPTER 168.

Of Merchant Shipping.

SECTION

- 1.—Damage to be apportioned when two vessels in fault.
- 2.—Liability for loss of life in certain cases to be joint and several.
- 3.—Respecting contribution in case recovery of damages for loss of life.
- 4.—Repeal of sec. 419 of Merchant Shipping Act, 1894

SECTION

- 5.—Respecting jurisdiction as to damage for loss of life.
- 6.—Duty of master to render assistance.
- 7.—Respecting apportionment of salvage.
- 8.—Limitations of actions.
- 9.—Application of chapter.
- 10.—Suspending section.

1. (1) Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault. Provided that—
 - (a) If, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and
 - (b) Nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and
 - (c) Nothing in this section shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.
- (2) For the purposes of this Chapter the expression “freight” includes passage money and hire, and references to damage or loss caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

*This Chapter passed April 16th, 1913, in pursuance of the Convention signed at Brussels in the year 1910.

2. Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessel shall be joint and several: Provided that nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons entitled to sue in respect of such loss of life or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

3. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault: Provided that no amount shall be so recovered which could not by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the persons entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have subject to the provisions of this Chapter, the same rights and powers as the persons entitled to sue for damages in the first instance.

4. (1) Sub-section (4) of section 419 of the Imperial Act, 57 and 58 Vic., Cap. 60, known as the "Merchant Shipping Act, 1894," (which provides that a ship shall be deemed in fault in case of collision where any of the collision regulations have been infringed by that ship), is hereby repealed.

(2) The failure of the master or person in charge of a vessel to comply with the provisions of section 422 of the said "Merchant Shipping Act, 1894," (which imposes a duty upon masters and persons in charge of vessels after a collision to stand by and assist the other vessel) shall not raise any presumption of law that the collision was caused by his wrongful

act, neglect, or default, and accordingly sub-section (2) of that section shall be repealed.

5. Any enactment which confers on any Court Admiralty jurisdiction in respect of damage shall have effect as though reference to such damage included reference to damages for loss of life or personal injury, and accordingly proceedings in respect of such damages may be brought *in rem* or *in personam*.

6. (1) The master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, her crew, and passengers (if any), render assistance to every person, even if such person be a subject of a Foreign State at war with His Majesty, who is found at sea in danger of being lost, and, if he fails to do so, he shall be guilty of a misdemeanor.

(2) Compliance by the master or person in charge of a vessel with the provisions of this section shall not affect his right or the right of any other person to salvage.

7. Where any dispute arises as to the apportionment of any amount of salvage among the owners, master, pilot, crew, and other persons in the service of any foreign vessel, the amount shall be apportioned by the Court or person making the apportionment in accordance with the law of the country to which the vessel belongs.

8. No action shall be maintainable to enforce any claim or lien against a vessel or her owners in respect of any damage or loss to another vessel, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether such vessel be wholly or partly in fault or in respect of any salvage services, unless proceedings therein are commenced within two years from the date when the damage or loss or injury was caused or the salvage services were rendered, and an action shall not be maintainable under this Chapter to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings therein are commenced within one year from the date of payment. Provided that any Court having jurisdiction to deal with an action to which this section relates may, in accordance with the rules of Court, extend any such period, to such extent and on such conditions as it thinks fit, and shall, if satisfied that there has not

during such period been any reasonable opportunity of arresting the defendant vessel within the jurisdiction of the Court, or within the territorial waters of the country to which the plaintiff's ship belongs, or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

9. (1) This Chapter shall not apply in any case in which proceedings have been taken before the passing thereof and all such cases shall be determined as though this Chapter had not been passed.

(2) The provisions of this Chapter shall be applied in all cases heard and determined in any Court having jurisdiction to deal with the case and in whatever waters the damage or loss in question was caused or the salvage services in question were rendered, and sub-section (13) of section 25 of "The Judicature Act" shall not have effect.

(3) This Chapter shall apply to any persons, other than the owners, responsible for the fault of the vessel, as though the expression "owners" included such persons, and in any case, where by virtue of any charter or demise, or for any other reason, the owners are not responsible for the navigation and management of the vessel, this Chapter shall be read as though for reference to the owners there were substituted references to the charterers or other persons for the time being responsible.

10. This Chapter shall come into operation on a day to be appointed for that purpose by proclamation of the Governor to the effect that the same has been approved and confirmed by His Majesty in Council.

CHAPTER 169.

Of Certificates of Masters and Mates.

SECTION

- 1.—Examination of masters and mates ; Rules, Proviso.
- 2.—First examiners ; future examiners.
- 3.—Fees by applicants.
- 4.—Certificates of competency. Provisoes.
- 5.—Certificates of service.
- 6.—Masters and mates to be certified.
- 7.—No clearance without production of certificates.
- 8.—Lost certificate provision.
- 9.—False representation ; penalty.
- 10.—Cancelled certificate to be delivered up.

SECTION

- 11.—Certificates in duplicate.
- 12.—Facilities to be afforded.
- 13.—Fees paid over.
- 14.—Merchant Shipping Act, 1894, repealed in part.
- 15.—Power of cancelling or suspending.
- 16.—Owner of certificate to be served with statement before adjudication; on trials by Magistrates two must concur.
- 17.—Tribunals, after hearing, to state decision and report to Governor.
- 18.—Governor in Council may alter forms certificates.

1. Examinations shall be instituted in this Colony, of persons who intend to become masters or mates of sea-going ships, hereinafter mentioned; and the Governor in Council may appoint Examiners to conduct such examinations at St. John's, and may, from time to time, lay down and make rules for the conduct and regulations of such examinations, and as to the qualification of the applicants, as nearly as may be in accordance with the regulations of the Board of Trade in England, and such rules shall be adhered to by the Examiners. Provided that examinations for certificates of competency as masters and mates shall be instituted in this Colony only upon proof that the previous service at sea of the person applying for the same has been such as is required by the regulations for the time being in force in the United Kingdom with respect to certificates of the like grade.

2. The examiners appointed under this Chapter shall be such persons as may produce proof to the satisfaction of the Governor in Council of their fitness and competency to act as such, and one of whom shall be called the Examiner in Chief, and the other two assistant examiners. But, after three persons have been so appointed examiners, no person shall be appointed an examiner unless he has himself passed a satisfactory examination before two or more examiners as to his fitness and competency to act as an examiner, and has received from them a certificate to that effect.

3. All applicants for examination shall pay, previous to examination, to the Colonial Secretary the following mentioned fees, that is to

say: for a certificate as master, ten dollars; for a certificate as mate, five dollars; and in the event of any applicant failing to procure his certificate of qualification on his first examination, he will be entitled to a second examination without payment of any additional fee; but if he fail to procure his certificate of qualification on such second examination, he shall pay the same fee previous to any subsequent examination as is hereby required to be paid previous to a first examination for the certificate he seeks to procure.

4. The Governor in Council shall deliver to every applicant who is duly reported by the Examiner-in-Chief, and one of the assistant examiners, to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability, and general good conduct on board ship, a certificate (hereinafter called a certificate of competency for sea-going ships), to the effect that he is competent to act as master, or as first mate, or only mate of a sea-going ship registered in Newfoundland as the case may be. Provided that in every case in which the Governor in Council has reason to believe such report to have been unduly made, he may remit the case to the same or to any other examiners, and may require a re-examination of the applicant, or a further enquiry into his testimonials and character, before granting him a certificate. And provided that certificates of competency granted contrary to the provisions of section one of this Chapter, or upon any false, incorrect, or insufficient proof, certificate or report of service, qualification, conduct, or character, shall be regarded as improperly granted.

5. Certificates of service for sea-going ships, differing in form from certificates of competency, may be granted as follows, that is to say:

- (1) Every person who, before the thirty-first day of December, 1875, has served as master in a sea-going ship, and who has produced satisfactory evidence at such examination, of his sobriety, experience, ability and general good conduct on board ship, shall be entitled to a certificate of service as master for sea-going ships, on payment of a fee of ten dollars.
- (2) Every person who, before the thirty-first day of December, 1875, has served as mate in a sea-going ship, and who has produced satisfactory evidence, in manner aforesaid, of his sobriety, experience, ability and general good conduct on board ship, shall be entitled to a certificate of service as first or only mate for sea-going ships, on payment of a fee of five dollars;

and each of such certificates of service for sea-going ships, shall contain particulars of the name, place, and time of birth and of the length and nature of the previous service, of the person to whom the same is issued; and thereupon the Governor in Council may issue such certificate of service to the various persons respectively entitled thereto.

6. No ship registered in Newfoundland, over one hundred tons registered tonnage, shall go to sea from any port or place out of Newfoundland or its Dependencies, save to the United States of America or the Dominion of Canada, unless the master and first mate or only mate thereof have obtained and possess valid certificates, either of competency or service for sea-going ships, appropriate to their several stations in such ships, or of a higher grade, from the Board of Trade in the United Kingdom, or valid certificates of competency appropriate to their several stations in such ships or of a higher grade granted in any British possession, and declared by order of His Majesty in Council, published in the London Gazette under the provisions of the Merchant Shipping Act, 1894, or of any Act of the Parliament of the United Kingdom containing such provisions, to be of the same force as certificates of competency for foreign-going ships, granted under the Acts of the Parliament of the United Kingdom relating to merchant shipping; and every person who, having been engaged to serve as master or first mate, or only mate, of any sea-going ship, registered in Newfoundland, over one hundred tons registered tonnage, goes to sea as aforesaid after that date as such master or mate, without being at the time entitled to, and possessed of, such certificate either of competency or of service for sea-going ships, as hereinbefore required, or who employs any person as master, first mate, or only mate, of any sea-going ship, as aforesaid, without first ascertaining that he at the time is entitled to and possessed of such certificate, shall, for each such offence, incur a penalty not exceeding one hundred dollars.

7. The master of every sea-going ship, registered in this Colony, over one hundred tons register tonnage, shall produce to every officer of the customs in this Colony, to whom he applies for a clearance of such ship, on any such voyage by sea, as aforesaid, the certificates of competency or service for sea-going ships, which the said master and his first mate or only mate are hereby required to possess, and no officer of the customs, at any port in this Colony, shall clear any such ship on any such voyage, as aforesaid, after that date, without such certificate being first produced to him; and if any master, mate, or other officer of any ship, attempts to sail or take such ship to sea from any port in Newfoundland on any such voyage as aforesaid, after that date, until the require-

ment of this Chapter has been fully complied with, such master, mate or other officer, shall for every such offence, incur a penalty of not exceeding one hundred dollars: Provided that if a vessel be in any other port than Saint John's or Harbor Grace, immediately preceding any voyage, and the master shall die or be prevented going on such voyage from illness, and it be made to appear to the officer of the customs that no master holding a certificate can be obtained, such officer may clear the vessel with the mate acting as master for that voyage.

8. Whenever any master or mate proves, to the satisfaction of the Governor in Council, that he has, without fault on his part lost or been deprived of any certificate already granted to him, the Governor in Council may, on payment of one-half the fee charged for the original certificate, cause a copy or duplicate of the original certificate to be made out and certified, as aforesaid, and to be delivered to him, and any copy which purports to be so made and certified as aforesaid, shall have all the effect of the original.

9. Every person who makes, or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or any other person, a certificate either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or any official copy of any such certificate, or who fraudulently makes use of any such certificate which is forged, altered, cancelled, or suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to, or allows the same to be used by, any other person, shall for each offence be guilty of a misdemeanor.

10. Every master or mate whose certificate is cancelled or suspended, shall deliver it to the Colonial Secretary of this Colony, unless he has already delivered it to the Court or tribunal before which his conduct was called in question in the course of the investigation upon which it is cancelled or suspended, and in default shall, for each offence, incur a penalty not exceeding two hundred dollars.

11. All certificates whether of competency or service shall be made in duplicate, and one part shall be delivered to the person entitled, and the other shall be kept and recorded in the office of the Colonial Secretary of this Colony; and all documents purporting to be certificates granted by the Governor in Council, in pursuance of this Chapter, shall be received in evidence, and shall be deemed to be such certificates without further proof,

unless the contrary be shewn; and whenever notice of the cancelling, suspending, altering, or otherwise affecting, by competent authority, any such certificate, is received by the department, there shall thereupon be made a corresponding entry in the record of certificates and a copy or duplicate of any such certificate, purporting to be certified by the Colonial Secretary, shall be *prima facie* evidence, as aforesaid, of any entry made, as aforesaid, and in respect of any such certificate shall be *prima facie* evidence of the truth of the matter stated in such entry.

12. The Governor in Council may, from time to time, make provision for affording facilities for imparting to seafaring men desirous of becoming applicants for certificates of competency under this Chapter, such information as to the theory of navigation as may fit them for examination, and may defray the expenses thereby incurred out of the money that may be voted by the Legislature for that purpose.

13. All fees received under this Chapter shall be paid over to the Minister of Finance and Customs.

14. And whereas by section 735 of the Act of Parliament of the United Kingdom, known as the "Merchant Shipping Act, 1894," it is enacted that the legislative authority of any British possession shall have power, by an Act or Ordinance confirmed by His Majesty in Council, to repeal wholly or in part any provisions of the said Act relating to ships registered in such possession; therefore upon, from and after the commencement of this Chapter, having first received such approval, so much of the provisions of the said Act, and of any Act of the said Parliament amending the same, and forming and to be constituted a part thereof, relating to ships registered in Newfoundland, as is inconsistent with this Chapter, shall be repealed, but this repeal shall not affect the past operation of any of the said provisions or sections, or the validity of any thing already done, or of any certificate already granted, or any right, title, obligation or liability already accrued thereunder.

15. The power of cancelling or suspending the certificate of a master or mate shall vest in and be exercised by a Marine Court of Enquiry, constituted under Chapter 170 of these statutes entitled "Of a Marine Court of Enquiry," by Magistrates' Naval Court, Admiralty Court, or other Court or tribunal, by which any charge, complaint, or case, is investigated or tried; or by the Board of Trade, if such master or mate is shown to have been convicted of any offence.

16. No certificate shall be cancelled or suspended under this Chap-

ter, unless a copy of the report or statement of the case upon which the investigation is had shall have been furnished to the owner of the certificate before the commencement of the investigation. Nor in the case of investigation conducted by Justices or by Stipendiary Magistrates, unless two Magistrates at least express their concurrence in the report.

17. The Courts or tribunals mentioned in the fifteenth section of this Chapter shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Governor, for transmission to the Board of Trade.

18. The Governor in Council may, by proclamation, make such alterations in the forms of mates' certificates or otherwise in relation to the provisions of this Chapter, as shall be in conformity with Imperial Acts, and with such instructions from the Board of Trade as may be communicated to the Governor, and such proclamation shall be construed with this Chapter and as if the same were herein specifically enacted.

CHAPTER 170.

Of Marine Courts of Enquiry.

SECTION

- 1.—Shipping casualty defined.
- 2.—An enquiry may be held into a shipping casualty on charge of incompetency or misconduct by Stipendiary Magistrate or Barrister, to be called a Marine Court of Enquiry.
- 3.—Power of Court as to charges of incompetency or misconduct.
- 4.—Respecting assessors.
- 5.—Not less than two assessors in cases involving the cancelling or suspension of a certificate.
- 6.—Power of Court to cancel or suspend certificates in certain cases.
- 7.—A copy of statement of case to be furnished officer before enquiry.
- 8.—Decision respecting cancelling of certificate to be stated in open court.
- 9.—Report to be sent to Governor for transmission to Board of Trade.

SECTION

- 10.—Certificated officer shall have opportunity to make defence in person or otherwise.
- 11.—No enquiry shall be held into a matter already the subject of enquiry elsewhere.
- 12.—No enquiry into matter of enquiry commenced in United Kingdom.
- 13.—Board of Trade may order re-hearing.
- 14.—Certificated officer shall deliver up his certificate on demand.
- 15.—Powers of Court as to proceedings and enforcement of orders.
- 16.—Governor in Council may appoint inspectors.
- 17.—Powers of inspectors.
- 18.—Penalty for refusing to attend on summons of inspector.
- 19.—Penalty for obstructing inspector.

1. For the purposes of this Chapter a shipping casualty shall be deemed to occur,—

- (1) When on or near the coasts of this Island or its Dependencies any ship is lost, abandoned, or materially damaged;
- (2) When on or near the coasts of this Island or its Dependencies any ship has been stranded or damaged, and any witness is found within this Island or its Dependencies;
- (3) When on or near the coasts of this Island or its Dependencies any ship causes loss or material damage to any other ship;
- (4) When any loss of life ensues by reason of any casualty happening on board any ship on or near the coasts of this Island or its Dependencies;
- (5) When in any place any such loss, abandonment, material damage or casualty above-mentioned occurs, and any witness is found within this Island or its Dependencies;
- (6) When in any place any British ship is stranded or damaged, and any witness is found within this Island or its Dependencies;

- (7) When any British ship is lost, or is supposed to have been lost, and any evidence is obtainable within this Island or its Dependencies as to the circumstances under which she proceeded to sea or was last heard of.

2. Whenever a shipping casualty shall occur and it shall appear necessary to make enquiry into the same, and whenever it shall appear necessary to hold an enquiry as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, the Governor in Council shall, by commission under his hand and seal, appoint any person, being a Stipendiary Magistrate or a practising barrister of ten years standing, to be and to be called a Marine Court of Enquiry, for the purpose of holding an investigation and enquiry into the said shipping casualty or charge of incompetency or misconduct.

3. The Marine Court of Enquiry so appointed as aforesaid may enquire as to charges of incompetency or misconduct on the part of masters, mates, or engineers of ships, in the following cases, namely:—

- (1) Where the incompetency or misconduct has occurred on board a British ship on or near the coasts of this Island or its Dependencies or on board a British ship in the course of a voyage to a port within this Island or its Dependencies;
- (2) Where the incompetency or misconduct has occurred on board a British ship registered in this Colony;
- (3) Where the master, mate or engineer of a British ship who is charged with incompetency or misconduct on board that British ship, is found in this Island or its Dependencies;
- (4) Where in the case of collision the master or certificated officer in charge of a vessel has failed to render to the other vessel, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger caused by the collision, and to stay by the other vessel until he has ascertained that she has no need for further assistance, and to give to the master or other person in charge of the vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

4. The said Marine Court of Enquiry shall hold such investigation

and enquiry into a shipping casualty with the assistance of one or more assessors of nautical, engineering, or other special skill or knowledge, to be appointed for the purpose by the Governor in Council.

5. Where the enquiry into a shipping casualty involves or appears likely to involve any question as to the cancelling or suspension of a certificate of a master, mate or engineer, the Court shall hold the said investigation or enquiry with the assistance of not less than two assessors having experience in the merchant service.

6. The said Marine Court of Enquiry shall have power to cancel or suspend the certificate of a master, mate or engineer if the Court finds:—

- (1) That the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default: Provided that the Court shall not cancel or suspend a certificate under this sub-section unless one at least of the assessors concurs in the finding of the Court;
- (2) That he is incompetent or that he has been guilty of any gross act of misconduct, drunkenness or tyranny;
- (3) That, in case of collision, he has failed to render to the other vessel, her master, crew and passengers, if any, such assistance as may be practicable and may be necessary to save them from any danger that may have been caused by the collision, and to stay by the other vessel until he has ascertained that she has not need of further assistance;
- (4) That, in case of collision, he has failed to give the master or other person in charge of the other vessel the name of his own vessel and of the port to which she belongs, and also the names of the ports from which she comes and to which she is bound.

7. A certificate shall not be cancelled or suspended by a Marine Court of Enquiry unless a copy of the report or a statement of the facts on which the said Marine Court of Enquiry was appointed, has been furnished by the said Court before the commencement of the investigation to the holder of the certificate.

8. Where any case before a Marine Court of Enquiry involves a

question as to the cancelling or suspension of a certificate, the Court shall, at the conclusion of the case or as soon as possible, state in open Court the decision to which it has come with respect to the cancelling or suspending thereof.

9. A Marine Court of Enquiry shall in all cases send a full report of the case with the evidence to the Governor for transmission to the Board of Trade, and also if it determines to cancel or suspend any certificate, send the certificate cancelled or suspended to the Governor for transmission to the Board of Trade with the said report.

10. Every investigation and enquiry into a shipping casualty, or into the conduct of the holder of a certificate, shall be so conducted as to give any person against whom a charge is made an opportunity of making his defence either in person or otherwise.

11. No enquiry or investigation shall be held in respect of any matter which has been the subject of an investigation or enquiry, and upon which a report has been made, by a competent court or tribunal in any part of His Majesty's dominions, or in respect of which the certificate of a master, mate or engineer has been cancelled or suspended by a Naval Court.

12. Where an investigation and enquiry has been commenced in the United Kingdom into any matter, no enquiry or investigation into the said matter shall be held under this Chapter.

13. The Board of Trade may order the rehearing of any enquiry or investigation in like manner as they order the rehearing of a similar enquiry or investigation in the United Kingdom.

14. A master, mate or engineer, whose certificate is cancelled or suspended by a Marine Court of Enquiry under this Chapter, shall deliver his certificate to the said Court on demand, under a penalty in case of refusal of two hundred dollars.

15. The said Court shall, so far as relates to the summoning of parties, compelling the attendance of witnesses, the regulation of its proceedings, the enforcing of penalties and obedience to the judgments or order of the Court, have the same powers as Justices of the Peace would have if the proceedings related to an offence or cause of complaint upon which they had power to make a summary conviction or order, or as near thereto as circumstances permit.

16. The Governor in Council may as and when he thinks fit, appoint any person to report to him upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused.

17. An inspector appointed under the next preceding section,—

- (1) May go on board any ship and inspect the same, or any part thereof, or any of the machinery, boats, equipments or other articles on board thereof, for the purpose of the report in the next preceding section mentioned, not necessarily detaining the said ship from proceeding on any voyage; and
- (2) May, by summons under his hand, require the attendance before him of all such persons as he thinks fit for examination for the purpose of his report; and
- (3) May require and enforce the production of all books, papers or documents which he considers important for the purposes of his report; and
- (4) May administer oaths, or may, in lieu of requiring or administering an oath, require any person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

18. Any person who refuses to attend upon the summons of an inspector appointed under this Chapter as a witness before the said inspector, or refuses to make any answer or to produce any book, paper or document, or to make and subscribe any declarations which the inspector is empowered to require by this Chapter, shall for each offence, be liable to a fine not exceeding fifty dollars.

19. If any person wilfully impedes an inspector appointed under this Chapter, whether on board a ship or elsewhere, such person shall be liable to a fine not exceeding fifty dollars for each offence, and may be seized and detained by the said inspector, or by any person whom the said inspector may call to his assistance, until he can be conveniently taken before a Justice of the Peace.

CHAPTER 171.

Of Surveyors of Shipping and Registry of Ships.

SECTION

1.—Governor may appoint registrars of shipping.

SECTION

2.—Surveyors of shipping. Fees.

3.—Change of master to be endorsed on register.

1. The Governor in Council may appoint, for every port or place in the Colony and its Dependencies at which it may be deemed expedient to authorize the registry of ships, the principal officer of customs at such port or place to be a registrar for all the purposes contemplated by the statutes of the Parliament of Great Britain and Ireland relating to Merchant Shipping.

2. The Governor in Council may appoint at any port or place in the Colony and its Dependencies an officer to superintend the survey and measurement of ships in conformity with the said statutes; and such officer shall be entitled to recover from the owner fees for the measurement of every vessel about to be registered for the first time, or requiring measurement for the purpose of registry, as follows:

One dollar and eighty cents for vessels under fifty tons, and measured in three sections.

Three dollars for vessels under fifty tons, and measured in five sections.

Three dollars for vessels from fifty to one hundred tons.

Six dollars for vessels over one hundred tons;
and reasonable travelling expenses, not exceeding twenty-five cents per mile necessarily travelled.

3. Any assistant collector, sub-collector, or preventive officer, shall have the same power to endorse on the certificate of registry of any ship, at any port where such ship may be, any change of master taking place at that port, as is given to the registrars of shipping under this Chapter, and the Act of the said Parliament known as the "Merchant Shipping Act, 1894."

CHAPTER 172.

Of the Survey of Foreign-going and Labrador Vessels.

SECTION
1.—Appointment of surveyor.

SECTION
2.—Vessels to be surveyed annually.

1. The Inspector of Shipping appointed under Chapter 176 of these Consolidated Statutes shall be the surveyor under this Chapter.

2. All steam or sailing vessels engaged in the foreign trade of this Colony, or vessels prosecuting the deep-sea and Labrador fisheries, registered in this Colony or elsewhere, from any port in this Colony, shall be annually surveyed for the purpose of showing that such vessels are in an efficient condition in every particular to proceed on any foreign voyage or in the prosecution of such fishery or fisheries. Before any such vessels shall proceed on any foreign voyage or to the prosecution of such fishery or fisheries, notice by the owner or master of said vessels shall be given to the surveyor or his deputy that said vessels are cleaned and in every way ready for survey. The surveyor or his deputy may make any recommendations for the purpose of placing such vessels in such condition as he may consider seaworthy. Such recommendations shall be duly carried out by the owner or master under a penalty of five hundred dollars, to be recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace: Provided also, that no certificate of class shall be granted to any vessel the owner or master of which shall have refused or neglected to make the repairs or carry out the recommendations suggested by the surveyor or his deputy. A sum of five cents per registered ton shall be charged for the survey provided under this section.

CHAPTER 173.

Of Wreck and Salvage.

SECTION

- 1.—Interpretation.
- 2.—Governor may appoint commissioners.
- 3.—Commissioners to be sworn.
- 4.—Duty of commissioners.
- 5.—Powers of commissioners.
- 6.—Plundering wrecked vessel.
- 7.—Unauthorized persons boarding wreck.
- 8.—Wreck to be delivered to commissioners ; Penalties.
- 9.—Public notice of wreck.
- 10.—Sale of wreck.
- 11.—Unclaimed wreck.
- 12.—Rights of owner of wreck.
- 13.—Delivery, payment and discharge of commissioner
- 14.—Adjustment of salvage claims.
- 15.—Offences in respect of wreck.
- 16.—Prosecutions for receiving ; Burden of proof.
- 17.—Powers of commissioner ; May take possession of wrecked property ; Penalty for obstruction.

SECTION

- 18.—Reward to informer.
- 19.—Salvage ; Right to.
- 20.—Salvage in specie.
- 21.—Procedure ; Disagreement. (1) Under \$500, or by consent ; Appeal. (2) Over \$500 ; Supreme Court in Saint John's or on Circuit.
- 22.—Disputes, at whose instance heard.
- 23.—Commissioner may seize property sworn to as subject to salvage claims.
- 24.—Salvage awarded and unpaid ; Recovery of.
- 25.—Salvage to be apportioned when awarded.
- 26.—Offences against Chapter ; Cumulative remedy
- 27.—Proceedings either in *personam* or in *rem*.
- 28.—Not to affect jurisdiction of Court of Admiralty.
- 29.—Minister of Marine & Fisheries ; Powers.
- 30.—Compensation to commissioners.
- 31.—Powers of Superior Court on removal.
- 32.—Penalties ; Recovery.

1. In this Chapter the word "Commissioner" shall mean a Commissioner of Wrecked Property; the word "master" includes every person having command or charge of a vessel; the word "vessel" includes every description of vessel used in navigation; the word "tackle," used in relation to a vessel, includes all furniture and apparel thereof; the word "goods" includes wares and merchandize of every description; the word "wreck" includes the cargo, stores and tackle of any vessel wrecked, stranded, or in distress, at any place within the limits of this Colony or Dependencies, and all parts of the vessel separated therefrom, and any boat, anchor, cable, materials, apparel or furniture belonging to such vessel, and the property of the ship's company or passengers, and also any goods or chattels, jetsam, flotsam, lagan or derelict, or any vessel or boat, or any part of any vessel or boat, or any cable, anchor, tackle, apparel, furniture, stores or materials of any vessel, or any goods, merchandize, or other chattels, which shall be found floating, sunk or cast ashore within three miles of the coast or shore of this Colony or Dependencies, "a ship-wrecked person" shall mean any person on board of or belonging to any vessel wrecked, stranded or in distress.

2. The Governor in Council may appoint and remove Commissioners in this Colony and Dependencies: may define and assign districts to

Commissioners, establish, alter, abolish, and vary districts from time to time, and make and vary regulations from time to time for the conduct of Commissioners and the management of wreck, not repugnant to the provisions of this Chapter, which regulations shall be as binding as if the same were embodied in this Chapter; and if at any time there be no Commissioner in a district, by reason of non-appointment, temporary absence, or otherwise, the senior Customs' officer residing in or near the district shall act as Commissioner, and he shall for the time being be deemed a Commissioner. In case of the inability, from illness, of the Commissioner or Customs' officer to be present at the locality of a wreck, he may appoint, by writing under his hand, any person to act in his stead, for whose acts he shall be responsible, and who shall have and exercise all the powers and authority of a Commissioner during the time he shall so act. Any person acting under the orders of a Customs' officer acting in pursuance of the provisions of this section, shall, for the purposes of this Chapter, be deemed to be acting under the orders of a Commissioner.

3. Commissioners appointed under this Chapter shall take an oath of office.

4. Where any British or foreign vessel is wrecked, stranded or in distress at any place within the limits of this Colony or Dependencies, the Commissioner shall, upon being made acquainted with such wreck, stranding or distress, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and shall assign such duties and issue such directions to each person as he thinks fit for the preservation of such vessel, and of the lives of the persons belonging to or on board the same and of the cargo, stores and tackle thereof, and of the property of such persons. Any person disobeying such directions of the Commissioner shall incur a penalty not exceeding two hundred dollars: Provided always, that nothing in this Chapter shall be construed to authorize the Commissioner to take charge of any ship, cargo, or materials, contrary to the expressed wish of the master or owner of such ship or cargo, or of their agents.

5. The Commissioner may with a view to the preservation of the vessel or of the shipwrecked persons or wreck, do all or any of the following things, that is to say:—

- (1) Require such persons as he thinks necessary to assist him.
- (2) Require the master of any vessel near at hand to give such aid with his men or vessel as may be in his power.

- (3) Demand the use of any boat, waggon, cart, horses, tackle, ropes, or other appliances that may be near at hand.
- (4) Demand and receive from any person in possession thereof, other than the owner or his agent, any wreck; and should such person refuse to deliver up the same, command as many men of the neighborhood to assist in taking, by force, possession thereof as may be necessary.

Any person refusing, without reasonable cause, to comply with any such requisition or demand so made as aforesaid, shall, for every such refusal, incur a penalty not exceeding twenty dollars.

6. Whenever any vessel is wrecked, stranded, or in distress, within the limits of this Colony or its Dependencies, and any person plunders, creates disorder, or obstructs the preservation of the vessel or of the ship-wrecked persons or wreck, the Commissioner may cause such person to be apprehended and kept in custody until he can conveniently be taken before a Stipendiary Magistrate to be dealt with according to law, and may use force for the suppression of any such plundering, disorder, or obstruction and may command all His Majesty's subjects to assist him in the use of such force.

7. Whenever any vessel is wrecked, stranded, or in distress, within the limits of this Colony or its Dependencies, any person, not being a Commissioner, or a person acting for or under the orders of a Commissioner, who, without the leave of the master of such vessel or of a Commissioner, endeavours to board the same, may be repelled by force; and the master or Commissioner, and any person under his or their orders, so repelling such person by force are hereby indemnified for so doing.

8. Where any person takes possession of wreck within the limits of this Colony or Dependencies, he shall, as soon as possible deliver the same to the proper Commissioner: Provided that the Minister of Marine and Fisheries may, if he thinks fit, dispense with such delivery in the case of wreck upon such conditions, if any, as the said Minister of Marine and Fisheries may think fit.

Any person taking possession of wreck within the limits of this Colony or Dependencies, who—

- (1) Fails to deliver the same to the Commissioner in pursuance of this section; or who

- (2) In a case where the Minister of Marine and Fisheries has dispensed with such delivery, upon any conditions, does not either comply with such conditions or deliver the wreck to such Commissioner as soon as possible,

shall forfeit any claim to salvage, and shall be liable to pay as a penalty double the value of such wreck, and a further sum not exceeding four hundred dollars.

9. Every Commissioner shall, within forty-eight hours after taking possession of any wreck, cause to be posted up in the Custom House or other public building nearest to the place where such wreck was found or was seized by him or delivered to him, a description of the same and of any marks by which it is distinguished, and shall also transmit a similar description to the Minister of Marine and Fisheries, who may give such publicity to the same as he may see fit.

10. With respect to the sale of wreck, the following provisions shall have effect, subject to the provisions of section 20 of this Chapter, that is to say:

- (1) The Commissioner may, where it is for the advantage of all parties so to do, sell wreck in his custody, and the proceeds of such sale, after defraying the expenses thereof, shall be held by the Commissioner for the same purposes and subject to the same claims, rights and liabilities as the wreck if it had remained unsold.
- (2) Where the owner of any wreck is known, or has established his title to the same, but neglected to satisfy all salvage claims and expenses for twenty days after notice in writing from the Commissioners, the Commissioner may sell such wreck, or a sufficient part thereof, and may, out of the wreck or proceeds thereof, satisfy the salvage claims thereon, and pay all expenses due, and pay or deliver the surplus to the persons entitled to receive the same.

11. When three months have elapsed since a wreck came into the possession of a Commissioner without any owner having established a claim to it, such wreck, if unsold, shall, subject to the provisions of section 20, be sold by such persons and in such manner as the Minister of Marine and Fisheries shall direct; and the proceeds thereof, after payment of expenses, costs, fees and salvage, shall be paid over to the Minister of Marine and Fisheries, and may, in case of non-payment, be recovered

in a suit by the Minister of Marine and Fisheries from such Commissioner. Such proceeds shall be paid by the Minister of Marine and Fisheries into the treasury of the Colony, therein to remain until the same shall be claimed by the owner thereof, who, on proof of his right thereto within six years from the time of such sale, before a Judge of the Supreme Court, shall, upon the order of such Judge, receive the amount out of the treasury.

12. The owner of any wreck in the possession of the Commissioner, upon establishing his claim thereto to the satisfaction of the Minister of Marine and Fisheries within three months from the time when such wreck came into the possession of the Commissioner, shall, upon paying the salvage fees, costs and expenses due, or upon giving security to the satisfaction of the Minister of Marine and Fisheries therefor, be entitled to have such wreck, or, in case of a previous sale, the proceeds thereof, delivered up to him or his agent. And where any such wreck is proved, to the satisfaction of the Minister of Marine and Fisheries, to belong to a foreign owner, the consul-general of the country to which the owner of such wreck belongs, or any consular officer of that country authorized in that behalf by any treaty or arrangement with such country, shall, in the absence of the owner or his agent, be deemed to be the agent of the owner, so far as relates to the custody and disposal of the wreck.

13. Upon delivery of wreck, or payment of the proceeds of wreck, by a Commissioner in pursuance of the provisions of this Chapter, such Commissioner shall be discharged from all liability in respect thereof; but such delivery or payment shall not prejudice or affect any question which may be raised by third parties concerning such wreck.

14. In any case where any two or more persons claim any wreck or proceeds, of what value or amount soever, in the possession of a Commissioner, any Court sitting and having jurisdiction in civil matters to the value or amount of the wreck or proceeds in question in the district of such Commissioner, may, on the application of such Commissioner or of any such persons, summon such persons before it, and may hear and adjudicate upon their claims, and may make such order between the parties in respect thereof, and of the costs of the proceedings, as to such Court may seem fit; and such order may be enforced in like manner as any order made in any suit brought in the same Court.

OFFENCES IN RESPECT OF WRECK.

15. Every person who does, within the limits of this Colony or its Dependencies, any of the acts following, that is to say:

- (1) Prevents or impedes, or endeavours to prevent or impede, the saving of any vessel which is wrecked, stranded, abandoned, or in distress, or prevents or impedes, or endeavours to prevent or impede, any person in his endeavour to save such vessel;
- (2) Steals or maliciously destroys any wreck;
- (3) Sells any vessel or wreck found within the limits of this Colony or Dependencies, not having a lawful claim thereto;
- (4) Boards any vessel which is wrecked, stranded, or in distress, against the will of the master, unless the person so boarding is or acts by the command of the Commissioner;
- (5) Assaults any Commissioner, or any person acting as a Commissioner, in the exercise of his duty for the preservation or assistance of any such vessel, or of wreck, or assaults any person acting by command of a Commissioner in the exercise of his duty, as aforesaid;
- (6) Prevents or impedes, or endeavours to prevent or impede, the saving of any wreck;
- (7) Secretes any wreck, or defaces or obliterates the marks thereon, or uses means to disguise the fact that it is wreck, or in any manner conceals the character thereof, or the fact that the same is such wreck, from any person entitled to enquire into the same;
- (8) Receives any wreck, knowing the same to be wreck, from any person other than the owner thereof or the Commissioner, and does not, within forty-eight hours, inform the Commissioner thereof; or
- (9) Offers for sale, or otherwise deals with any wreck, knowing it to be wreck, not having a lawful title to sell or deal with the same; or
- (10) Keeps in his possession any wreck, knowing it to be wreck, without a lawful title to keep the same, for any time longer than the time reasonably necessary for the delivery of the same to the Commissioner;

Shall be deemed guilty of a misdemeanour, on conviction whereof he shall be liable to be imprisoned for any term not exceeding two years,

with or without hard labor; or of an offence against this Chapter, on summary conviction whereof before a Stipendiary Magistrate he shall be liable to be imprisoned for a period not exceeding six months, or to pay a penalty not exceeding four hundred dollars.

16. In any indictment or prosecution for receiving, secreting, disguising, defacing, obliterating marks on, or for the possession of, or for selling or dealing with any wreck, unless the accused shews that he was possessed of the same for more than twelve months before the date of indictment or commencement of the prosecution, it shall lie upon him to show that he did not know and had not the means of knowing the same to be such wreck, or that he was lawfully possessed of or entitled to sell or deal with the same; and in any indictment or prosecution for secreting, defacing, receiving, possessing, selling, dealing with, or concealing the character of any wreck, evidence may be given, either before or after verdict, of any former conviction of the accused for any of the said offences. In any proceeding under this section, the accused may, if he thinks fit, be sworn and examined as an ordinary witness in the case.

17. Where a Commissioner suspects that any wreck is secreted or concealed by, or wrongfully in the possession of, any person, he may apply to any Justice for a search warrant, and such Justice shall have the power to grant such warrant, by virtue whereof it shall be lawful for the Commissioner to enter (and if need be by force) any house, building and place, whether closed or unclosed, and any vessel, and to search for, remove and detain any wreck there kept or secreted; and if any wreck is discovered, and the person in whose possession or on whose premises the same is found, fails, on being summoned to appear before a Stipendiary Magistrate, to prove to the satisfaction of such Magistrate that he was lawfully entitled to the possession of such wreck, or was in possession of the same for more than twelve months before being so summoned, he shall be liable to a penalty not exceeding eighty dollars, and for every subsequent offence shall be liable, at the discretion of the Magistrate, either to a penalty not exceeding two hundred dollars or to imprisonment, with hard labour, for any period not exceeding three months: Provided that the Magistrate may, if he thinks fit, commit him for trial for a misdemeanour under this Chapter.

18. If any such discovery, as aforesaid, is made in consequence of information given to any person by the Commissioner, the informer shall be entitled, by way of salvage, to such sum, not exceeding eighty dollars, as the Commissioner, under instructions from the Minister of Marine and Fisheries, may allow.

SALVAGE.

19. Where, within the limits of this Colony or Dependencies, any vessel is wrecked or stranded, abandoned, or in distress, and services are rendered by any person in saving any wreck, there shall be payable to the salvor by the owner of such vessel or wreck, as the case may be, a reasonable amount of salvage, including expenses properly incurred.

20. In all cases where wreck is divisible, and a party entitled to salvage shall, before a sale shall have taken place, give notice to the owner, master or Commissioner, he shall be entitled to demand and receive, in lieu of all pecuniary compensation, a due proportion of the wreck in specie.

PROCEDURE IN SALVAGE.

21. In case of disagreement as to salvage between parties claiming to be salvors and the owners of wreck in respect of which salvage is claimed, such question shall be heard and determined as follows, and not otherwise, that is to say:—

- (1) If the amount claimed does not exceed one hundred dollars, or if in any case the parties consent, in writing, the question shall be heard and determined by the Stipendiary Magistrate for the district where the salvage services were rendered, or where the property liable is at the time of making the claim, and his award shall include fees and costs.

If any party feels aggrieved by the award of the Magistrate aforesaid, he may appeal to the Supreme Court, sitting either in St. John's or on Circuit: Provided always that the appellant shall, within ten days after the case of appeal has arisen, give notice to the other parties and to the Magistrate of his intention to appeal, and of the grounds thereof, and shall give sufficient security, to the satisfaction of the Magistrate, to prosecute such appeal.

- (2) If the amount claimed shall exceed one hundred dollars, and the parties do not consent as aforesaid, then such question shall be heard and determined by the Supreme Court, sitting in St. John's or on Circuit, or by a Judge in vacation. And if in any suit or proceeding for salvage, in the Supreme Court, or before a Judge thereof, the claimant recovers an amount less than one hundred dollars, then, unless the Court or Judge certify that such suit or proceeding was unfit to be determined or could not have been conveniently

determined by a Magistrate, the claimant shall have no costs, charges or expenses incurred by him in the prosecution of his claim, but shall pay to the other party such costs, charges and expenses if any, as the Court or Judge may direct.

22. Any dispute as to salvage may be heard and determined at the instance or upon the application of either the salvor or the owner of the property subject to salvage, or, when the property is in custody of the Commissioner, upon the application or at the instance of such Commissioner.

23. A Commissioner may seize any property found within his district, and alleged, by a sworn statement, made before a Justice of the Peace, to be liable for salvage, and may detain such property until the salvage, together with fees and costs due thereon, is ascertained and paid, or process is issued for the arrest or detention thereof by some competent Court, or until sufficient security is given, to be approved of by the Magistrate, Court or Judge. For the purpose of ascertaining the amount in which security is to be given, the Magistrate, Court or Judge shall appoint two sworn valuers, who shall value such property and deliver to the Magistrate, Court or Judge, and to the parties, a written statement of such valuation.

24. If, when salvage has been ascertained and awarded under this Chapter, such salvage, together with fees and costs so awarded, is not paid within fourteen days, the Commissioner may sell the property liable for such salvage, fees and costs, or a sufficient part thereof, and out of the proceeds defray the expenses of the sale and the salvage, fees and costs awarded, and shall pay or deliver up the surplus, if any, to the owners of the property or other persons entitled thereto.

25. When the salvage is ascertained, it shall be apportioned, without any further suit or proceeding, among the persons entitled thereto by the Magistrate, Court or Judge adjudicating thereupon.

26. Any person committing an offence against this Chapter, which is also an offence against some other Chapter, may be prosecuted, tried, and, if convicted, punished under either Chapter; but no person shall be liable to be tried more than once for the same offence.

27. The jurisdiction conferred by this Chapter on any civil court

may be exercised either by proceedings *in rem* or by proceedings *in personam*.

28. Nothing in this Chapter shall be construed to affect the Admiralty jurisdiction of the Supreme Court in this Colony or its Dependencies.

29. The Minister of Marine and Fisheries may permit all goods saved from any vessel stranded or wrecked within the limits of this Colony or Dependencies to be forwarded to the port of its original destination, or returned to the port at which the same were shipped, taking such security for the proper protection of the revenue in respect of such goods as he may think proper.

30. There shall be paid to Commissioners, acting in pursuance of this Chapter, the expenses and fees following, that is to say:—

- (1) All the expenses properly incurred by them in the performance of their duties.
- (2) For wreck received or taken by the Commissioner into his custody, a percentage of five per cent. on the value thereof: Provided that, in no case shall the whole amount for percentage, so payable, exceed one hundred dollars.
- (3) For every sale of wreck conducted by a Commissioner, a sum not exceeding one per cent. on the realized value thereof.

The Commissioner shall, in addition to all other rights and remedies for the recovery of such expenses or fees, have the same rights and remedies as a salvor has in respect of salvage due to him.

The foregoing fees, payable to Commissioners, shall be charged on the wreck.

31. If any proceeding under this Chapter shall be sought to be set aside by removal into, or appealed from to the Supreme Court or a Judge thereof, the said Court or Judge may confirm the same, notwithstanding the want of form therein or may correct or amend or wholly reverse the same, and give final judgment upon the merits.

32. All fines, penalties and forfeitures imposed by or incurred under this Chapter, not hereinbefore appropriated to any person or for any purpose, shall be paid to the Minister of Marine and Fisheries for the use of the Colony, and sued for and recovered (where not otherwise provided for) in the Supreme Court in His Majesty's name.

CHAPTER 174.

Of Passenger Accommodation on Board Steamers
and Sailing Vessels.

SECTION

- 1.—Governor may appoint surveyors and fix remuneration.
- 2.—Owners of passenger steamers to have them surveyed twice a year ; surveyors to report to customs ; certificate of number of passengers—cabin, deck ; form of certificate to be filed at customs ; proviso : penalty.
- 3.—Penalty for taking more passengers than allowed by such certificate ; additional penalty

SECTION

- 4.—Penalty for making false certificate, or assisting.
- 5.—Penalty for being wrongfully on board passenger steamer.
- 6.—Separate apartments for females engaged as servants in the fishery ; sanitary accommodation.
- 7.—One person per ton—maximum.
- 8.—Boat accommodation.
- 9.—Rules.
- 10.—Penalties.
- 11.—Recovery of penalties.

1. The Governor in Council may appoint a sufficient numer of competent persons to be surveyors for the purposes of this Chapter, and may remove such surveyors, and may fix and alter the rates of remuneration to be received by such surveyors.

2. The owner of every steamer carrying passengers coastwise or on any of the lakes, river or inland waters of the Colony shall cause such steamer to be surveyed at least twice in every year, at intervals of six months, by two of the surveyors appointed as aforesaid, and such surveyors shall make their report of such survey to the Assistant Collector of Customs, who shall, upon receipt of such report and its confirmation by the Governor in Council, give to such owner a certificate of the following particulars:

The number of passengers which such steamer is, in the judgment of the surveyors, fit to carry, distinguishing if necessary between the respective number to be carried on the deck and in the cabins, such numbers to be subject to such conditions and variations, according to the time of the year, the nature of the voyage and other circumstances, as the case requires. Such certificates shall be in duplicate, and in form as follows:

This ship (*the name of the ship*) is fit to carry, when there is no incumbrance of passenger accommodation,—

Fore Cabin Passengers	After Cabin Passengers	Deck Passengers.	Total Passengers.
Number	Number.	Number.	Number.

One part of such certificate shall be filed at the Customs in St. John's. Such surveys of passenger steamers shall also be held at any time that the Governor in Council may deem expedient.

Any owner neglecting or failing to comply with the provisions of this section shall incur a penalty not exceeding two hundred dollars for every offence.

3. If the owner or master, or other person in charge of any passenger steamer, receives on board thereof, or on or in any part thereof, or if such ship has on board thereof, any number of passengers which, having regard to the time, occasion and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding one hundred dollars, and an additional penalty not exceeding one dollar for every passenger over and above the number allowed by the certificate.

4. Every person who knowingly and wilfully makes, or assists in making, or procures to be made, a false or fraudulent certificate with respect to any passenger steamer requiring a certificate under this Chapter, or who forges, assists in forging or procures to be forged, fraudulently alters, assists in fraudulently altering or procures to be fraudulently altered, any certificate required by this Chapter or any words or figures in any such certificate or any signature thereto, shall be deemed guilty of a misdemeanor.

5. Any person wrongfully persisting in going on board or refusing to depart from on board any passenger steamer, when lawfully requested, shall incur a penalty of twenty-five dollars.

6. Sailing vessels carrying females engaged as servants in the fishery, or carrying females as passengers, between Newfoundland and Labrador, shall be provided with such separate cabins or apartments as will afford at least fifty cubic feet of space for each of such females; and the owners of such vessels shall provide for such females sufficient accommodation for sanitary purposes.

7. No more than one person for each registered ton shall be carried in sailing vessels proceeding to or returning from Labrador.

8. The owners of such vessels shall provide sufficient boat accommodation for at least one-third of the persons on board such vessels carrying passengers between Newfoundland and Labrador.

9. The Governor in Council may make rules and regulations for effectively carrying out the provisions of sections 6, 7 and 8, of this Chapter, and alter and amend the same from time to time, which rules and regulations, when published in the *Royal Gazette*, shall be construed to form part of this Chapter, and shall have the same effect in law as if they had been specially incorporated herein.

10. For all violations of this Chapter not hereinbefore provided for there shall be imposed a penalty not exceeding one hundred dollars for each offence, or in default of payment, of imprisonment for a term not exceeding three months.

11. All fines, penalties, and forfeitures, under this Chapter, shall be recovered and imposed in a summary manner before a Stipendiary Magistrate; and for the purposes of this Chapter every Stipendiary Magistrate shall have jurisdiction over this Colony and its Dependencies.

CHAPTER 175.

Of Wireless Telegraphy on Steamers.

SECTION

- 1.—Steamer to be provided with wireless telegraph and signalling apparatus.
- 2.—Maintenance of apparatus.
- 3.—Respecting clearance at Customs.

SECTION

- 4.—Penalty.
- 5.—Application of Chapter.
- 6.—Saving clause.

1. Every steamer to which this Chapter applies shall be provided—

- (1) With a wireless telegraph installation approved of by the Minister of Marine and Fisheries;
- (2) With at least one qualified wireless operator approved of by the Postmaster General;
- (3) With a Morse signalling apparatus approved by the Minister of Marine and Fisheries;
- (4) With at least one person on board capable of operating such signalling apparatus and of reading signals from other ships.

2. The wireless telegraphy installation provided on a ship to which this Chapter applies shall be maintained in good order and shall be attended to by an operator qualified as aforesaid in accordance with rules and regulations to be made by the Governor in Council under this Chapter for the purposes thereof.

3. No steamer to which this Chapter applies shall receive a clearance at any Custom House for the seal fishery or otherwise unless and until the Collector is satisfied that the provisions of this Chapter in respect of said steamer have been complied with.

4. If any requirement of this Chapter is not complied with in the case of any steamer to which this Chapter applies, the master or owner shall be liable for each offence to a fine of twentyfive hundred dollars, to be recovered in a summary manner before a Stipendiary Magistrate.

5 This Chapter shall apply to any steamer which ordinarily is en-

gaged in prosecuting the seal fishery from any port of this Colony, when engaged in the seal fishery or when carrying more than sixty persons; and to any other vessel carrying passengers from or within this Colony when named by the Governor in Council in a Proclamation to be published in the *Royal Gazette*.

6. Nothing in this Chapter shall affect the obligation to obtain a license for a wireless telegraphy installation under Chapter 35 of these Consolidated Statutes, entitled "Of the Postal and Telegraph Service," or prevent the Governor in Council or other person exercising a like control over such wireless telegraphy in times of war or otherwise as may be exercised in respect of other wireless telegraphy.

CHAPTER 176.

Of the Encouragement of Ship Building.

SECTION

- 1.—Bounty upon all vessels with fixed deck.
- 2.—Vessels to be in accordance with schedules.
- 3.—Survey and classification of vessels.
- 4.—Respecting issue of certificates.
- 5.—Penalty for false statement by Surveyor.
- 6.—Appointment of Surveyor.
- 7.—Appointment of Deputy Surveyors.
- 8.—Fee for survey.

SECTION

- 9.—Recovery of fees.
- 10.—Bounty for vessels having motor engines.
- 11.—Wooden pumps and blocks.
- 12.—Free entry for certain ship-building materials.
- 13.—Grant of certificate to registered Company.
- 14.—Guarantee to certified Company.
- 15.—Semi-annual returns.
- 16.—Free entry for construction material

1. Upon all vessels having a whole or fixed deck, newly built and equipped in every respect with new materials, from the keel up, in this Colony, and registered therein, there shall be granted a bounty as hereinafter provided, payable out of the general revenue of this Colony. Such bounty shall be paid by warrant to the person for whom such vessel was built, or some other person duly authorized by him to receive the same after registration according to law.

2. Vessels in respect of which bounty may be claimed must be shown to have been well and substantially built in a workmanlike manner, and equipped in every respect with new material, and in accordance with Schedules A, B, C, or D, hereto, and shall be subject to inspection and survey by the Surveyor or his deputy, and no bounty shall be paid unless upon the certificate of such Surveyor or his deputy that such vessel has been built well and substantially and in accordance with the said Schedules.

3. The Surveyor or his deputies shall survey from time to time all vessels upon which bounty is claimed. Such vessels may be classed for terms of five, seven or ten years.

- (1) All vessels built in accordance with Schedule B may be classed for ten years, and shall receive a bounty of \$16.00 per ton on builder's measurements. No certificate for any vessel of the said class shall be issued unless such vessel has been surveyed:—

- (a) When the frames and knees are in place;
- (b) When the vessel is planked; and

(c) Upon the completion of the vessel.

- (2) All vessels built in accordance with Schedule C, may be classed for seven years, and shall receive a bounty of ten dollars per ton on builder's measurement. Certificates for such vessels may be granted upon a survey being made after the vessel is completed.
- (3) All vessels built in accordance with Schedule D, and not of greater tonnage than is in said Schedule provided, may be classed for five years, and shall receive a bounty of eight dollars per ton on builder's measurement. Certificates may be granted upon a survey being made after the vessel is completed.
- (4) All vessels classed at Lloyds under Schedule A shall receive a bounty of twenty dollars per ton.
- (5) Any vessel having received a class shall be exempt from annual survey up to the expiration of half the time for which it has received a class.

4. Certificates shall be issued by the Governor in Council for the term of years allowed by the Surveyor, which Certificates shall be withheld until all fees herein provided for shall have been paid to the Minister of Finance and Customs.

5. If the Surveyor or his deputy shall make any false statement in any report of any survey under this Chapter, he shall on conviction in a summary manner be liable to a penalty of five hundred dollars, or, in default, one year's imprisonment.

6. The Governor in Council may appoint a person to carry out the provisions of this Chapter, who shall be known as the Inspector of Shipping, in this Chapter called the Surveyor.

7. The Surveyor shall appoint, subject to the approval of the Governor in Council, such deputies as may from time to time be found necessary for the purposes of this Chapter.

8. The owner or master of every ship surveyed for the purpose of being classed or obtaining bounty, shall, before receiving a certificate, pay to the treasury a sum of ten cents per registered ton of such vessel.

9. Amounts payable under the next preceding section may be recovered in any Court of competent jurisdiction by an action in the name

of the Minister of Finance and Customs against the master or owner of the vessel surveyed.

10. All vessels built according to Schedules A, B, C, or D and having motor engines installed shall be entitled to, and shall receive the bounty applicable to the Schedule under which said vessels are built.

11. All wooden pumps and blocks used in the equipment of vessels in respect of which bounty is claimed under this Chapter shall be manufactured within this Colony.

12. All materials required for the building and equipment of any vessel in respect of which bounty shall be claimed under this Chapter, including hardwood timber, spars in the raw state, wire rigging, machinery for windlass, patent wheel gear, iron pumps, sail cloth or canvas for making sails, chains, anchors, iron, copper for fastening, and metal sheathing for bottoms of such vessels, motor engines for hoisting and galvanized straps for blocks, when imported by blockmakers for use in their trade within this Colony, but not wooden pumps or blocks, shall be admitted free of duty.

13. Whenever it shall be proved to the satisfaction of the Governor in Council that a company has been registered with limited liability under the "Companies' Act," for the purpose of the construction and operation in any place in this Colony of a ship-building yard, and in the opinion of the Governor in Council there is a reasonable ground for believing that the operations of such company may be carried on successfully, a certificate may be issued to such company under the hand of the Colonial Secretary entitling such company to the benefits of this Chapter.

14. The Minister of Finance and Customs is hereby authorized out of the funds of the Colony and subject to the provisions hereinafter mentioned, to pay to any company which has received the certificate mentioned in the preceding section, for and during a term of fifteen years, any sum by which the net annual profits of the company shall be less than seven per cent, upon so much of the capital of the company as shall be actually paid in cash: Provided that the total amount of capital in any one such company, upon which the said sum shall be payable, shall be the amount actually paid up in cash, and shall not exceed thirty thousand dollars, and that the total amount payable hereunder in respect of any one such company shall, in no case, exceed two thousand one hundred dollars in any one year. The term of fifteen years shall commence on and from the date when the yard shall be completed and ready for actual

operation, and any sum provided under this section shall be payable yearly: Provided that any sum payable hereunder shall only be payable on the continuous operation of the yard.

15. No payment shall be made under the preceding section except upon the certificate of the Auditor General. In order to obtain such certificate, the company shall furnish to the Minister of Finance and Customs, half-yearly, a full and correct statement of the receipts and expenditure of the company, and shall accord all proper facilities to the Auditor General to make a complete examination of the books, accounts, and vouchers of the company, in conjunction with an auditor to be appointed by the company. In the event of any dispute arising between the two auditors, in relation to the said statement, the same shall be referred to the determination of a public chartered accountant, as umpire, to be appointed by the two auditors, or if such auditors are unable to agree upon the selection of such accountant, by a Judge of the Supreme Court on the application of the company. The award of such umpire shall be final and conclusive.

16. All plant, machinery, implements, apparatus and material, necessary for the original construction and installation of the said yard shall be admitted into the Colony free of duty.

SCHEDULE A.

VESSELS CLAIMING LLOYD'S CLASS.

All vessels, eighty tons and upwards, may be classed at Lloyds, if the owners so desire, in which case Lloyds' Rules relating to the construction of vessels must be carried out.

SCHEDULE B.

VESSELS CLAIMING BOUNTY AND LOCAL CLASS.

The thickness of plank used in planking, ceiling, and decking, shall be:

For vessels of twenty tons and under: Planking, not less than one and a half inches; ceiling, one and one quarter inches; decking, one and three-quarter inches.

For vessels from twenty to thirty tons: Planking, not less than two inches; ceiling, two inches; decking, two and three-eighth inches.

For vessels from thirty to forty tons: Planking, two and a quarter inches; ceiling, two inches; decking, two and a half inches.

For vessels from forty to sixty tons: Planking, two and a half inches; ceiling, two and a quarter inches; decking, two and three quarter inches.

For vessels from sixty to ninety tons: Planking, not less than two and three-quarter inches; ceiling, two and one-quarter inches; decking, three inches.

For vessels from ninety tons upwards: Planking, not less than three inches, ceiling, two and a half inches; decking, three inches.

Plank and ceiling shall be through fastened; there shall be one bolt or trenail in each timber for every strake of plank and ceiling in all vessels over twenty-five tons.

Vessels under that measurement may be fastened under the bilge with galvanized or composition nails, one in each timber for every strake of plank. Nails are not to be used in substitute for bolts in planking vessels over thirty tons.

All planks over seven inches in width shall have two bolts or trenails in each timber, and caulked outside and wedged inside.

The frame shall be of good, squared, sound timbers, which shall not be more than five inches apart, and thoroughly fastened together with fore-and-aft bolts.

For planking there shall not be less than five feet shift between the butts, and two butt bolts and one rivet bolt through each butt.

In timbering a vessel there shall be two trenails in each locking, and the locking shall be keyed.

Any vessel with a raised deck shall have main deck go aft under the raised deck to the next beam. The raised deck beam shall have a rivet bolt through and bolted two feet apart; deck knees between the beams, fore-and-aft stringers at bilge, one inch thicker than ceiling, and to be two to four feet wide according to tonnage.

One stringer at each side of the bow with breast hook; one pair pointers aft.

Plates for bob-stay and fore-stay shall come back on main plank, eighteen inches long, and shall have three bolts in each plate.

For stem, keel, and stern post there shall be good dove-tail plates.

Each vessel shall have a good windlass, and windlass bitts rivetted and bolted through the beams.

Each vessel shall be supplied with two pumps.

Each vessel shall be furnished with Lloyds' tested chains of suitable size and lengths, anchors, chainplates, deadeyes, hawsepipes, rigging, sails and spars according to tonnage, all of which shall be new.

In all vessels the keel, stem, stern-post, the outside planking, from the keel to the light water line, shall be of birch, juniper or other good sound hardwood, and the inside bilge planks shall be one inch thicker than the plank above the bilges. The planking from the bilges upwards may be of juniper or good sound spruce.

Vessels over seventy tons shall be iron strapped four straps on each side. Three masted schooners to have six straps on each side, opposite the rigging. In the building of all vessels three strakes of planking shall intervene between two butts fixed to the same timber. All timber used in the construction of such vessels shall be seasoned.

SCHEDULE C.

VESSELS CLAIMING BOUNTY AND LOCAL CLASS.

The thickness of plank used in planking, ceiling, and decking, shall be:—

For vessels from fifteen or twenty tons: Planking, not less than one and one-half inches; ceiling, one and one-quarter inches; decking, one and one-half inches. Timbers not more than nine inches apart.

For vessels from twenty to thirty tons: Planking on top sides not less than two inches; under top sides, one and three-quarter inches; ceiling, one and one-half inches; decking, two inches. Timbers not more than seven inches apart.

For vessels from thirty to forty tons: Planking on top sides, two and one-half inches; under top sides, two and one-quarter inches; ceiling one and three-quarter inches; decking, two and one-quarter inches. Timbers not more than seven inches apart.

For vessels from forty to sixty tons: Planking, two and one-half inches; ceiling two inches; decking, two and three-quarter inches. Timbers not more than seven inches apart.

For vessels from sixty to seventy-five tons: Planking, two and one-half inches; ceiling, two and one-quarter inches; decking, two and three-quarter inches. Timbers not more than five inches apart.

For vessels of seventy-five tons and upward: Planking, two and three-quarter inches; ceiling, two and one-half inches; decking, two and three quarter inches. Timbers not more than five inches apart.

Plank and ceiling shall be through fastened; there shall be one bolt or trenail in each timber for every strake of plank or ceiling in all vessels over thirty tons.

Vessels under forty tons may be fastened under the bilge with galvanized or composition nails, one in each timber for every strake of plank. Nails are not to be used in substitution for bolts in planking vessels over forty tons.

In vessels from thirty tons upwards with flush decks, the decking may be one-quarter inch less in thickness.

All planks over seven inches in width shall have two bolts or trenails in each timber, trenails to be caulked outside and wedged inside.

The frame shall be of good, squared, sound timbers, thoroughly fastened together.

For planking there shall not be less than four and one-half feet shift between the butts, and two spikes and one rivet bolt through each butt.

In timbering a vessel there shall be two trenails in each locking, and the locking shall be keyed.

Any vessel with a raised deck shall have main decks go aft under the raised deck to the next beam. The raised deck beam shall have a rivet or screw bolt through and bolted, two feet apart, deck knees between the beams, fore-and-aft stringers at bilge, one-inch thicker than ceiling, and to be two to four feet wide, according to tonnage.

One stringer each side of the bows, with breast hooks.

One pair pointers aft.

Plates for bob stay and fore stay shall come back on main plank, eighteen inches long, and shall have three bolts in each plate.

For stem, keel and stern post there shall be good dovetail plates.

Each vessel shall have a good windlass, and windlass bitts rivetted and bolted through beams.

Each vessel shall be furnished with Lloyd's tested chains of suitable

sizes and lengths, anchors, chain plates, deadeyes, hawsepipes, rigging, sails and spars, according to tonnage, all of which shall be new.

Each vessel shall be supplied with two pumps.

In all vessels the keel, stem, stern-post and outside planking from the keel to the light water line, shall be of birch, juniper or other good, sound hardwood, and the inside bilge planks shall be one inch thicker than the plank above the bilges. The planking from the bilges upward may be of juniper or good sound spruce.

Every vessel shall have as many pairs of additional strap-iron knees as to the Surveyor or deputy shall seem necessary.

In the building of all vessels three strakes of the planking shall intervene between butts fixed to the same timber.

SCHEDULE D.

VESSELS CLAIMING BOUNTY AT LOCAL CLASS.

The thickness of planks used in planking, ceiling and decking, shall be:

For vessels from fifteen to twenty tons: Planking not less than one and a quarter inches; ceiling one and one-eighth inches; decking one and a quarter inches; timbers not more than twelve inches apart.

For vessels from twenty to thirty tons: Planking on top-sides not less than one and three-quarter inches; under top-sides one and one-half inches; ceiling one and one-quarter inches; decking, one and three-quarter inches; timbers not more than ten and one-half inches apart.

For vessels from thirty to forty tons: Planking two inches; ceiling one and one-half inches; decking two inches; timbers not more than eight inches apart.

Plank and ceiling shall be through fastened; there shall be one bolt or trenail in each timber for every strake of plank or ceiling in all vessels over thirty tons.

Vessels under this Schedule may be fastened under the bilge with galvanized or composition nails, one in each timber for every strake of plank.

All plank over nine inches in width shall have two bolts or trenails

in each timber, trenails to be caulked outside and wedged inside, for all vessels over thirty tons.

The frame shall be of good, sound timbers thoroughly fastened together.

For planking, there shall not be less than four feet shift between the butts, and one rivet-bolt through each butt.

In timbering a vessel, there shall be two trenails in each locking, and the locking shall be keyed.

Any vessel with a raised deck shall have main decks go aft under the raised deck to the next beam. The raised deck beam shall have a screw or rivet-bolt through and bolted, two feet apart, deck knees between the beams, fore and aft stringers at bilge, one inch thicker than ceiling, and to be two to one feet wide, according to tonnage for vessels over thirty tons.

One pair of stringers each side of the bows, with breast hooks, for vessels over thirty tons.

For stem, keel and stern-posts there shall be good dove-tail plates.

Each vessel shall have a good windlass and windlass bitts, rivetted and bolted through beams.

Each vessel shall be furnished with Lloyds or Admiralty tested chains of suitable sizes and lengths, anchors, chainplates, deadeyes, hawse-pipes, rigging, sails, and spars, according to tonnage, all of which shall be new.

Every vessel under thirty tons shall be supplied with at least one pump and every vessel over thirty tons with at least two pumps.

In the building of all vessels under thirty tons, two strakes, and of all vessels over that tonnage three strakes of the planking shall intervene between butts fixed to the same timber.

In all vessels, the keel, stem, stern-post, the outside planking from the keel to the light water line, shall be of birch, juniper, or other good, sound hard wood. The planking from the bilges upwards may consist of juniper or good sound spruce.

CHAPTER 177.

Of Companies Operating Marine Docks in this Colony.

SECTION

1. Certificate entitling Company to benefits of Chapter may be issued in certain cases.
- 2.—Certain payments may be made to Companies obtaining certificate.

SECTION

- 3.—No payments made except on certificate of Auditor General.
- 4.—Certain articles to be exempt from duties.

1. Whenever it shall be proved to the satisfaction of the Governor in Council that a Company has been registered with limited liability under the "Companies' Act," for the purpose of the construction and operation in any place in this Colony of a marine dock, and in the opinion of the Governor in Council there is reasonable ground for believing that the operations of such Company may be carried on successfully, a certificate may be issued to such Company under the hand of the Colonial Secretary entitling such Company to the benefits of this Chapter.

2. The Minister of Finance and Customs is hereby authorized, out of the funds of the Colony and subject to the provisions hereinafter mentioned, to pay to any Company which has received the certificate mentioned in the preceding section, for and during a term of fifteen years, any sum by which the net annual profits of the Company shall be less than five per cent. upon so much of the capital of the Company as shall be actually paid up in cash: Provided that the total amount of capital in any one such Company, upon which the said sum shall be payable, shall be the amount actually paid up in cash, and shall not exceed fifty thousand dollars and that the total amount payable hereunder in respect of any one such Company shall in no case exceed two thousand five hundred dollars in any one year. The term of fifteen years shall commence on and from the date when the dock shall be completed and ready for actual operation, and any sum provided under this section shall be payable yearly: Provided that any sum payable hereunder shall only be payable on the continuous operation of the dock.

3. No payment shall be made under the preceding section, except upon the certificate of the Auditor General of Newfoundland. In order to obtain such certificate, the Company shall furnish to the Minister of Finance and Customs half-yearly a full and correct statement of the receipts and expenditure of the Company, and shall afford all proper facili-

ties to the Auditor General to make a complete examination of the books, accounts, and vouchers of the Company, in conjunction with an auditor to be appointed by the Company. In the event of any dispute arising between the two auditors, in relation to the said statement, the same shall be referred to the determination of a Public Chartered Accountant, as umpire, to be appointed by the two auditors. The award of such umpire shall be final and conclusive.

4. All plant, machinery, implements, apparatus and material necessary for the original construction and installation of the said dock shall be admitted into the Colony free of duty.

CHAPTER 178.

Of Dealers in Marine Stores.

SECTION.

- 1.—Marine Stores dealers to be subject to certain provisions.
- 2.—Penalties for purchasing (1) from person under 16; (2) except in daytime;

SECTION

- (3) secreting stolen property.
- 3.—Penalties for cutting up or unlaying cables without permit.

1. (1) Every person whose business is solely or principally that of dealing in buying and selling any of the articles following, that is to say: Old anchors, cables, sails, junk or iron, or marine stores of any kind, shall be subject to the following provisions:
 - (a) He shall have his name, together with words "Dealer in Marine Stores" distinctly painted, in letters at least three inches in length and two inches in breadth, on some conspicuous part of each warehouse, shop, store or place of deposit belonging to him;
 - (b) He shall keep a book or books fairly written, and shall enter therein an account of all such articles as he from time to time becomes possessed of, and a statement in respect of each article, describing the character thereof and of any marks thereon, and of the time at which and the person from whom he purchased or received the same, and a description of the business and place of abode of such person;
 - (c) He shall, at all times when required by an order of a Stipendiary Magistrate, produce and deliver up to the person named in such order every book kept in pursuance of the provisions of this Chapter, and shall allow such person to inspect and take copies of the same.
- (2) Every person who makes default in observing the provisions aforesaid shall, for the first offence, incur a penalty not exceeding forty dollars; and for every subsequent offence a penalty not exceeding one hundred dollars, and, in default, imprisonment for one month.

2. (1) Every person who deals in the purchase of old marine stores of any description, including anchors, cables, sails, junk, iron, copper, brass, lead, and other marine stores, and who, by himself or his agent, purchases any old marine stores from any person under the age of sixteen years, shall, on summary conviction, be liable to a penalty of four dollars for the first offence and of six dollars for every subsequent offence.
- (2) Every such person, who by himself or his agent, purchases or receives any old marine stores into his shop, premises or place of deposit, except in the day time, between sunrise and sunset, shall, on summary conviction, be liable to a penalty of five dollars for the first offence and of seven dollars for every subsequent offence.
- (3) Every person purporting to be a dealer in old marine stores, on whose premises any such stores which were stolen are found secreted, is guilty of a misdemeanor.
3. (1) A marine store dealer shall not on any pretence cut up any cable or other like article exceeding five fathoms in length or unlay the same into twine without obtaining a written permit as required by this section.
- (2) In order to obtain a written permit a marine store dealer shall make a declaration before some Justice of the Peace, stating the quality and description of the cable or other like article about to be cut up or unlaid; the name and description of the person from whom he purchased or received the same; and that he has purchased or otherwise acquired the same without fraud and without any knowledge or suspicion that it was come by dishonestly; and the Justice of the Peace before whom the declaration is made may grant a permit authorizing the marine store dealer to cut up or unlay the cable or other article.
- (3) If a marine store dealer cuts up or unlays any cable or other article without complying with the provisions of this section, he shall be liable to a penalty of five dollars for the first offence, and ten dollars for every subsequent offence.

CHAPTER 179.

Of Outport Pilots and Pilotage.

SECTION

- 1.—Governor in Council shall have power to cause provisions of chapter to apply to such ports as he may deem expedient.
- 2.—Two Commissioners shall form a quorum.
- 3.—Commissioners shall not license pilots unless found fit after due examination.
- 4.—Certificates shall be revocable at pleasure of Commissioners. Form of certificate.
- 5.—Certificate to be numbered and registered; penalty for transferring certificate.
- 6.—Commissioners may establish bye-laws for further regulation.
- 7.—Commissioners to determine all claims for pilotage.

SECTION

- 8.—Concerning rates for pilotage.
- 9.—Flags shall be used by licensed pilots; penalty for unlicensed person using pilot's flag.
- 10.—Penalty for taking pilot to sea against his will.
- 11.—Guidance of vessel to be given to pilot.
- 12.—Vessels obliged to take pilots; proviso.
- 13.—Nothing in chapter shall deprive any person acting as pilot of payment. Pilots responsible for improper conduct.
- 14.—Recovery of penalties.
- 15.—When penalty over \$12, party aggrieved may appeal.

1. The Governor in Council shall have power, from time to time, to cause the provisions of this Chapter to apply to such of the ports of this Colony as he may deem expedient. The ports to which the same shall apply shall be declared by proclamation of the Governor, to be published in the *Royal Gazette*, and the date from which the same shall take effect shall also be stated in such proclamation, and shall be not less than six months from the publication thereof.

2. For each of the ports of this Colony to which the provisions of this Chapter have been or shall be applied as aforesaid, there shall be three Commissioners of Pilots, of whom two shall be a quorum, who shall act gratuitously. The appointment of such Commissioners shall be in the Governor in Council. Every Commissioner shall take the following oath before a Judge or Magistrate:—

“I, A. B., do swear that I will act diligently, faithfully and impartially, in the selection and examination of pilots for the port of”

3. The Commissioners shall not license any one as a pilot, except on due examination they shall find him a fit person to act in that capacity, and it shall be their province to determine, from time to time, subject to the approval of the Governor in Council, the number of pilots necessary for the requirements of the port.

4. The Commissioners shall grant certificates to licensed pilots in the following form, and such certificates shall be revocable at pleasure:

CERTIFICATE.

Port of

Newfoundland.

I, C. D., Chairman of the Board of Commissioners, appointed by law to examine and select pilots for the said port, do hereby certify that E. F., having been examined by the said Board, was deemed a fit person to undertake the pilotage of vessels of every description into and out of the said port, and on the day of, A. D. 19.., was, by the said Board, licensed to act in that capacity.

(Signed),

C. D., *Chairman.**(This license must not be lent or transferred.)*

Age.	Height.	Complexion.	Color of Hair and Eyes	Remarks.

The annual approval of this certificate must be endorsed.

5. Every such certificate shall be numbered and registered in a book kept for that purpose, and shall be annually renewed. No licensed pilot shall lend or transfer his certificate, under a penalty of twenty dollars for a first offence, and for a second offence he shall lose his certificate, and shall not again be licensed.

6. The Commissioners may establish bye-laws for the further regulation of pilots and for extra remuneration in cases of an extraordinary nature, and for the adjustment and decision of questions arising between masters of vessels and pilots and others, respecting pilotage, and also respecting the salvage of anchors and cables, and may annex penalties for enforcing the same; but no bye-laws shall be in force until approved of by the Governor in Council.

7. The Commissioners may hear and determine all claims for pilotage, salvage of anchors and cables, and remuneration for extraordinary services, in which the pilot is concerned, under the like forms and proceedings used in Magistrates' Courts for the recovery of debts, and the amount of such Commissioners' judgment and the costs incident thereto, to be taxed according to the scale of said Court, shall be levied on the goods and chattels of the party against whom such judgment is given, or

on the vessel (except His Majesty's ships) on account of which such claim may have arisen.

8. The rates of pilotage payable by vessels entering or leaving a port shall be fixed by the Board of Commissioners thereof, but shall be subject to the approval of the Governor in Council, and such rates, when so approved, together with a list of exemptions, shall be published in the *Royal Gazette* and at least one other newspaper. Any pilot exacting a large sum for his services, or taking a less sum than is allowed by said rates, shall forfeit for such offence the sum of eight dollars, and, when he has exacted more, shall refund the excess received by him.

9. Every licensed pilot shall carry such flag and have his boat so marked and rigged as shall be directed by the Commissioners, under a penalty of twelve dollars; and every unlicensed person carrying such flag and having his boat so marked and rigged shall be liable to a penalty of twelve dollars.

10. No licensed pilot shall be taken to sea against his will, under a penalty of two hundred dollars on the master of the vessel, except when through stress of weather the same is unavoidable, in which case he shall be entitled to receive from the master or owner of the vessel payment at the rate of sixteen dollars and eighty cents a month for all the time lost, besides the usual meat, drink and a passage home from the first port the ship shall enter where the same can be obtained.

11. Any person taking charge of any vessel as pilot, and not being licensed, shall give up the guidance of said vessel to the first licensed pilot who shall board such vessel outside the limits fixed by the Board of Commissioners.

12. All ships and vessels, except His Majesty's ships, vessels belonging to the Royal Yacht Club, coasting and fishing vessels, which have not been boarded until they have come within the limits fixed by the Commissioners, shall be obliged to take or pay a pilot; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot, unless such vessel shall have been usually employed as a *bona fide* coaster, or if such vessel shall have on board any part of a cargo imported in such vessel from any port or place out of this Colony or if such vessel shall be going to any place out of this Colony or to any outport to load a cargo for any foreign market: Provided that, when in consequence of stormy weather, extreme danger would arise to any boat going outside the limits aforesaid, the Commissioners may award pilotage to any pilot who

shall in such case have offered his services within the limits aforesaid, and have been rejected.

13. Nothing herein contained shall deprive any person, who may act as pilot in the absence of licensed pilots, from receiving payment for his services, according to the rates fixed as aforesaid, or to relieve any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action, at the suit of the party injured.

14. All penalties imposed by this Chapter, or hereafter to be imposed by any bye-law made by virtue thereof, may be sued for and recovered before a Stipendiary Magistrate or any two Justices of the Peace, and shall be levied with costs by warrant of distress of such Stipendiary Magistrate or Justices on the goods of the offender; and, in default of goods, such Magistrate or Justices shall order such offender to be imprisoned for a term not exceeding one day for every dollar in the said penalties, or until such penalties shall be paid; and one-half of such penalties shall go to the use of the person suing for the same, and the remainder to the Minister of Finance and Customs for the use of the Colony.

15. Whenever the amount of any judgment given by the said Commissioners, or of any penalty imposed by the said Justice or Justices, shall exceed twelve dollars, any party feeling himself aggrieved may appeal from the judgment of such Commissioners, or from the conviction of such Justice or Justices, to the Supreme Court, upon giving sufficient security to prosecute such appeal within a reasonable time, and to abide by and perform such judgment or order as may be made thereon.

CHAPTER 180.

Of Pilots and Pilotage for the Port of St. John's.

SECTION

- 1.—Commissioners of Pilots.
- 2.—Respecting the licensing of pilots.
- 3.—Granting of certificates.
- 4.—Certificate fees.
- 5.—Power of Commissioners to make bye-laws.
- 6.—Power of Commissioners to make regulations.
- 7.—Power of Commissioners to make rules.
- 8.—Rates of pilotage.
- 9.—Respecting carrying of flags by vessels.
- 10.—Sailing vessels not to pay pilotage more than once in thirty days.
- 11.—Penalty for taking pilot to sea.
- 12.—Penalty for piloting vessel without certificate.

SECTION

- 13.—Exemption of certain vessels from pilotage.
- 14.—Unlicensed person may act in certain cases.
- 15.—Power of Commissioners in deciding disputes.
- 16.—Recovery of penalties.
- 17.—Respecting right of appeal.
- 18.—Application and disposition of pilots' fund.
- 19.—Respecting returns by Commissioners.
- 20.—Superannuated pilots.
- 21.—Effect of bye-laws.
- 22.—Publication *prima facie* evidence.
- 23.—Extra pilotage for maintenance of cutter.
- 24.—Payment of pilotage dues.
- 25.—Appointment of secretary.

1. There shall be five Commissioners of Pilots, three of whom shall be a quorum, for the port of St. John's, who shall act gratuitously, and meet at least once a month. The appointment of such Commissioners shall be in the Governor in Council. Every Commissioner shall take the following oath before a Judge or Magistrate:

"I, A. B., do swear that I will act diligently, faithfully and impartially in the discharge of the duties of a Commissioner of Pilots for the port of St. John's."

2. There shall be twelve pilots for the port of St. John's, who shall be licensed by the Commissioners.

- (1) If the number of licensed pilots, at any time after the passing of this Chapter, shall be less than twelve, the Commissioners shall license a sufficient number of persons qualified, as herein provided, to make up the number;
- (2) Any person desirous of applying for examination as a pilot shall make application to the Commissioners for a nomination for examination as a pilot, and, on such nomination being granted, he shall be entitled to be examined;
- (3) All candidates nominated for examination as pilots shall be examined before the Chief Examiner of Masters and Mates, under regulations to be made by the Governor in Council,

and he shall certify the result of such examination to the Commissioners.

3. On the Commissioners being satisfied by the result of such examination, as certified to them by the said Chief Examiner, that the person examined is a fit and proper person to be licensed as a pilot, the Secretary of the Board of Commissioners shall grant a certificate to such person in the following form.

CERTIFICATE.

Port of St. John's, Newfoundland.

No.

I,, Secretary of the Board of Commissioners of Pilots, do hereby certify that, having been found to be a fit and proper person to take the pilotage of vessels of every description into and out of the said port, was on the day of, A. D. 19.., by the said Board licensed to act as such pilot.

.....
Secretary.

Entered in the Register of Pilots' Licenses, thisday of, A. D. 19...

Notice.—This License cannot be lent or transferred.

Age.	Height,	Complexion.	Color of Hair and Eyes.	Remarks.

4. Every certificate granted to a licensed pilot shall be numbered and registered in a book kept for that purpose, shall be in force for one year, and shall be annually renewed. Pilots shall pay fifty dollars for every such certificate and shall pay a like sum annually for renewal thereof; and in case of loss or defacing the same, not above two dollars for a new certificate. No licensed pilot shall lend or transfer his certificate under a penalty of twenty dollars for the first offence, and for a second offence he shall lose his certificate and shall not be again licensed.

5. The Commissioners may establish bye-laws for the further regulation of pilots and for extra remuneration in cases of an extraordinary

nature, and for the adjustment and decision of questions arising between masters of vessels and pilots and others respecting pilotage, and also respecting the salvage of anchors and cables, and may annex penalties for enforcing the same; but no bye-laws shall be in force until approved by the Governor in Council.

6. Subject to the approval of the Governor in Council, the Commissioners may make regulations for the management, control and operation of the pilot cutter and for the government of licensed pilots, and for ensuring their sobriety and good conduct and constant attendance to and effectual performance of their duty on board and on shore.

7. Subject to the approval of the Governor in Council, the Commissioners may make rules for punishing any breach of their regulations by the withdrawal or suspension of the license or certificate of the pilot guilty of such breach, or by the infliction of penalties upon pilots; so, however that every such penalty be capable of reduction at the discretion of the Commissioners.

8. The rates of pilotage payable by vessels entering or leaving the port of St. John's shall be as follows, when such vessels are hailed, spoken or boarded by a licensed pilot to the southward or eastward of Cape Spear, or to the northward of Sugar Loaf, and before entering the Narrows. No steam or sailing vessel returning to the said port, through stress of weather, shall be compelled to take a pilot on her said return to the said port, nor on her second departure therefrom; provided that such steam or sailing vessel shall not have gone from or remained in such port during the whole space of three days. Nor shall any steam or sailing vessel which shall have proceeded from the port of St. John's to any other port in this Colony on the voyage be compelled to take a pilot on her said return to the said port of St. John's, nor on her second departure therefrom; provided she shall not have been gone from the said port of St. John's for three days.

On vessels under eighty tons register measurement, five dollars and thirty-five cents.

On vessels from eighty to one hundred tons, six dollars and seventy cents.

On vessels from one hundred to one hundred and twenty tons, seven dollars and thirty-five cents.

On vessels from one hundred and twenty to one hundred and sixty tons, eight dollars.

On vessels from one hundred and sixty to two hundred tons, eight dollars and seventy cents.

On vessels from two hundred to two hundred and forty tons, nine dollars and thirty-five cents.

On vessels from two hundred and forty to two hundred and eighty tons, ten dollars.

On vessels from two hundred and eighty to three hundred tons, ten dollars and seventy cents.

On vessels from three hundred to three hundred and fifty tons, thirteen dollars and thirty-five cents.

On vessels from three hundred and fifty to four hundred tons, sixteen dollars.

On vessels from four hundred to five hundred tons, eighteen dollars and seventy cents.

On vessels from five hundred to six hundred tons, twenty-one dollars and thirty-five cents.

On vessels from six hundred to seven hundred tons, twenty-four dollars.

On vessels from seven hundred to eight hundred tons, twenty-six dollars and seventy cents.

Over that size, for every one hundred tons additional, one dollar and thirty-five cents; and on no sailing vessel is the pilotage to exceed thirty-two dollars.

Steamers shall pay pilotage on their net tonnage at the same rate per ton as sailing vessels.

Steamers employed in the fisheries of the Colony shall be exempt, except on foreign voyages.

Coastal steamers shall also be exempt.

Subsidized mail steamers in connection with the Colony shall pay on the horse power, at the rate of eight cents for each horse power.

No steamer shall pay more than forty-eight dollars at one time.

All coasting vessels, which may take pilots, to pay one-half of the

above rates of pilotage, in proportion to their tonnage. The above scale of pilotage shall be payable on the registered tonnage of all such vessels, as ascertained before going out of the harbor.

9. Every vessel and steamer obliged to take or pay a pilot shall show either her house flag, Board of Trade signal or national flag before entering the Narrows, and in case any vessel or steamer shall enter the Narrows without a pilot, and without having shown such house flag, Board of Trade signal or national flag, such vessel or steamer shall be subject to the usual pilotage rates.

10. No sailing vessel owned or registered in this Colony shall be compelled to pay pilotage more than once within a period of thirty days.

11. No licensed pilot shall be taken to sea against his will, under a penalty of two hundred dollars on the master of the vessel, except when through stress of weather the same is unavoidable, in which case he shall be entitled to receive from the master or owner of the vessel payment at the rate of twenty-five dollars a month for all the time lost, besides the usual meat, drink, and a passage home from the first port the ship shall enter where the same can be obtained.

12. Any person taking charge of any vessel as pilot and not holding a valid certificate, shall give up the guidance of the said vessel to the first pilot being the holder of such certificate who shall board such vessel to the eastward of Small Point, under a penalty of fifty dollars.

13. All ships and vessels shall be obliged to take or pay a pilot, except His Majesty's ships, vessels belonging to a Royal Yacht Club, coasting vessels and vessels which have not been boarded, hailed or spoken until after they have entered the Narrows; and no vessel shall be deemed to be a coasting vessel and exempt from the liability of taking a pilot unless such vessel shall have been usually employed as a *bona fide* coaster.

14. Nothing herein contained shall deprive any person who may act as a pilot in the absence of licensed pilots, from receiving payment for his services, according to the said table of rates, or to relieve any licensed or other pilot from his responsibility to answer for the amount of any loss sustained through his improper conduct in a civil action at the suit of the party injured.

15. Any questions or disputes arising between pilots, masters of vessels and others, respecting pilotage or for any extra remuneration in

cases of an extraordinary nature, and all other questions and disputes between them, respecting salvage or otherwise, shall be submitted to the Commissioners to be adjusted and decided by them, and the judgment of the Commissioners or a majority of them respecting all such questions and disputes in which the subject matter does not exceed the sum of forty dollars, shall be final and binding on all parties; and every licensed pilot who shall act contrary to this regulation, or shall refuse or neglect to appear before the Commissioners, after twenty-four hours' notice, when his attendance shall be required by them on any occasion, or shall give any unnecessary trouble, annoyance or detention to masters of vessels, shall for every offence be liable to a penalty not exceeding forty dollars, and also to suspension or dismissal at the discretion of the Commissioners.

16. All penalties imposed by the foregoing sections of this Chapter, or hereafter to be imposed by any bye-law made by virtue hereof, may be sued for and recovered before a Stipendiary Magistrate, and shall be levied, with costs, by warrant of distress of such Stipendiary Magistrate on the goods of the offender; and for want of goods, such Magistrate shall order such offender to be imprisoned for a term not exceeding one day for every dollar in the said penalties, or until such penalties shall be paid, and one-third of such penalties shall go to the use of the person suing for the same.

17. Whenever the amount of any judgment given by the said Commissioners, or of any penalty imposed by the said magistrate, shall exceed forty dollars, any party feeling himself aggrieved may appeal from the judgment of such Commissioners or from the conviction of such Magistrate to the Supreme Court, upon giving sufficient security to prosecute such appeal within a reasonable time and to abide by and to perform such judgment or order as may be made thereon.

18. The Pilots' Fund, so called, now accrued or hereafter accruing, shall be invested or deposited in the names of the Commissioners, subject to the approval of the Governor in Council, and no portion of such fund shall be appropriated except by resolution of the Commissioners, approved by the Governor in Council.

- (1) Every licensed pilot shall annually pay to the Commissioners the sum of fifty dollars by way of contribution to the Pilots' Fund, and in default of payment of such contribution, or any part thereof, the same may be recovered in a summary manner before a Stipendiary Magistrate, in an action in the name of the Commissioners.

19. The Commissioners of Pilots shall, before the thirty-first day of January in each year, make a return to the Governor in Council, for the information of the Legislature, of the amount and conditions of the Pilots' Fund for the preceding year, and of any special matters which they may consider necessary, or which the Governor in Council may require.

20. Subject to the approval of the Governor in Council, the Commissioners may make regulations for the relief of superannuated or infirm licensed pilots, out of the Pilots' Fund or otherwise, or of their wives, widows or children, and may determine what persons from among the licensed pilots, their wives, widows or children are and are not respectively entitled to participate in the benefits of existing or future funds, and the terms and conditions upon which, if entitled, they are to be so entitled. No superannuated or infirm licensed pilot, so relieved, shall receive more than two hundred dollars per annum out of the Pilots' Fund.

21. Every bye-law made by the Commissioners in the exercise of their powers, if and when confirmed by order of the Governor in Council and published as hereafter mentioned, shall be valid and effectual; and every breach thereof shall be deemed an offence against this Chapter.

22. Every bye-law made by the Commissioners and confirmed by the Governor in Council shall be published in the Royal Gazette, and a copy thereof printed in the *Royal Gazette* shall be *prima facie* evidence of the original and of the contents thereof and of its having been confirmed by order of the Governor in Council.

23. In addition to the amounts payable under the preceding sections of this Chapter for pilotage, the Commissioners shall collect a sum equal to ten per cent. of the present rate on all vessels entering or leaving the port of St. John's, which said amount, together with all moneys received as fees for licenses and certificates and the amount of any penalties imposed and recovered under the provisions of this Chapter, shall be held by the Commissioners in such manner as they shall consider desirable for the maintenance of the pilot boat and the general expenses of the pilot service.

..

24. All pilotage dues shall be paid to the Secretary of the Commissioners, who shall pay the same to the pilots entitled thereto, after first deducting the amount provided in section 23 hereof, for the upkeep of the pilot boat and the maintenance of the service, and any sum in which such

pilots may respectively be indebted for contributions to the Pilots' Fund under Section 18 (1) hereof.

25. It shall be lawful for the Commissioners to appoint a Secretary and a Clerk, and to pay such persons out of any funds in their hands such salaries as to them shall seem reasonable.

CHAPTER 181.

Of Harbor Master and Harbor Regulations for the Port of St. John's.

SECTION

- 1.—Governor-in-Council may appoint a Harbor Master.
- 2.—Harbor Master may take charge of and remove vessels.
- 3.—Under certain conditions vessels to pay only one half of harbor dues.
- 4.—Harbor dues; Proviso: dues not payable oftener than once in every half year.
- 5.—Harbor Master to give directions as to mooring, &c.
- 6.—Removal of vessels.
- 7.—Fairway of Narrows and harbor, entrance to be kept clear.
- 8.—Entrance and approach to public coves to be kept clear.

SECTION

- 9.—Harbor Master may remove vessels.
- 10.—Appliances to be used by vessels discharging.
- 11.—Main spanker and jib-boom to be rigged in.
- 12.—Vessels not lying at wharves to have person in charge, and light
- 13.—Vessels in stream to have no line to land.
- 14.—Ballast, &c., not to be thrown overboard from vessels; penalty.
- 15.—Nor into waters of harbour; penalty.
- 16.—General penalty for violation of chapter
- 17.—Recovery and appropriation of penalties.
- 18.—Exception as to private wharves.

1. The Governor in Council may appoint a Harbor Master for the port of St. John's.

2. If, in the opinion of the Harbor Master, any vessel anchored in the harbor is likely to sink or to become an obstruction to navigation, the Harbor Master may, after giving twelve hours notice to the owner or agent of such vessel, or without notice where there is no owner or known agent in St. John's, take charge of and remove such vessel and may deal with and dispose of such vessel in such manner as he shall think necessary, to provide for the free navigation of the port, and all expenses incurred under this section shall be borne by the vessel, or her owners, and may be recovered with costs in an action in the name of the Harbor Master before a Stipendiary Magistrate.

3. Any vessel arriving in the port of St. John's for coal, food or supplies, or for repairs, and not bringing cargo for delivery in this Colony, and not taking from this Colony any cargo which such vessel did not bring into this Colony, shall pay only one-half the harbor dues provided by the following section.

4. The following amounts, as harbor dues, shall be paid by vessels arriving at the port of St. John's, at the time of their being entered at the Custom House, except ships of war and vessels engaged in the coasting trade and fishing, viz.:

Every vessel of sixty tons and upwards, and not more than one hundred tons, two dollars.

Every vessel of more than one hundred tons, and not more than two hundred tons, three dollars.

Every vessel of more than two hundred tons, and not more than three hundred tons, four dollars.

Every vessel of more than three hundred tons, and not more than four hundred tons, five dollars.

Every vessel of more than four hundred tons, six dollars.

Provided, that no vessel shall be compelled to pay harbor dues more than once in every half year—viz., once between the first day of January and thirtieth day of June, and once between the thirtieth day of June and the first day of January.

5. In case of any dispute arising relative to the mooring, hauling or removing of vessels in said port, the Harbor Master shall, if called upon, give such directions in respect to the same as the circumstances of the case shall demand; and all persons having the charge or command of such vessels shall comply with the directions of the Harbor Master, under the penalty of twenty dollars for every neglect or refusal so to do.

6. The Harbor Master, if called upon, may order the removal of any vessel moored in such a manner or situation as to be unsafe or dangerous to any other vessel.

7. The Harbor Master shall direct that the fairway of the Narrows and entrance of the harbor be kept clear for the safe ingress and egress of vessels; and also that the approach to the wharves be kept clear for mail steamers when necessary, and that the usual anchoring ground for ships of war be kept clear and unoccupied upon their arrival and during their sojourn in port; and he may, upon complaint, make such order respecting the mooring or removal of vessels as may be necessary to provide for the free navigation of the port.

8. The Harbor Master shall direct that the entrance and approach from the harbor to the public coves in St. John's shall be kept clear and unobstructed, so that at all times there may be safe ingress and egress thereto and thereout. Any person neglecting or refusing to obey any

order or command of the Harbor Master made or given under the authority of this section shall be liable to a penalty of twenty dollars to be recovered in a summary manner before a Stipendiary Magistrate.

9. If any vessel shall not be immediately removed by the owner, master, or person in charge, when ordered so to be, the Harbor Master may employ men to remove or assist in removing such vessel as required, or as may be necessary, and the expenses of such removal shall be borne by the vessel or her owners.

10. All vessels loading or discharging coals, ballast, stone, gravel, earth, and similar articles, shall have a sufficient piece of canvas or tarpaulin, or be provided with other sufficient appliances so placed as to prevent the same from falling into the harbor, under the penalty of twenty dollars for every offence, to be paid by the owner, master, or person in charge of such vessel.

11. No vessel shall remain lying at any wharf for a longer period than twenty-four hours with her main spanker or jibboom rigged out. The Harbor Master shall direct all vessels with main spanker or jibboom rigged out to have the same rigged in, and all accidents to such vessels resulting from the main spanker or jibboom being rigged out contrary to the provisions of this section shall be at the risk of the owner of such vessels.

12. Any vessel anchored in the said port, and not lying at a wharf, shall have a person on board to take care of her by day and night, and shall have a bright light burning, at least six feet above the upper deck, from sunset to sunrise, unless specially exempted by the Harbor Master.

13. Every vessel anchoring in St. John's Harbor shall leave a sufficient fairway for the movements of other vessels, between the vessel so anchored and the wharves on the North side of said harbor, and no vessel shall, when anchored in the stream, have any tow line or hawser or be in any way made fast or connected to any wharf, except for the purpose of hauling in or out.

14. No ballast, stone, gravel, earth or rubbish of any kind, shall be thrown overboard from any vessel in the harbor of St. John's, or at the entrance thereof, (except in places, if any, set apart for that purpose by the Harbor Master), under a penalty not exceeding fifty dollars for every offence, to be paid by the owner, master or other person having charge of the said vessel.

15. No person shall throw any ballast, stone, gravel, earth or rubbish of any kind, into the waters of the said harbour, nor at the entrance thereof, nor deposit the same on the beach thereof below highwater mark, under a penalty not exceeding fifty dollars for every offence, and in default of payment, imprisonment for a period not exceeding sixty days.

16. Any person violating any of the provisions of this Chapter, or disobeying the lawful commands or directions of the Harbor Master made under this Chapter, for which violation no penalty is hereinbefore prescribed, shall be subject to a penalty of twenty dollars.

17. All penalties under this Chapter, provided for the violation of any of the harbor regulations, or disobedience to the lawful commands or directions of the Harbor Master, shall be recovered, with costs, in a summary manner before a Stipendiary Magistrate, and shall be appropriated one half to the person giving information of the offence, and one half to the Minister of Finance and Customs for the use of the Colony.

18. Nothing in this Chapter shall apply to vessels lying alongside private wharves, except sections 10, 11, 14 and 15.

CHAPTER 182.

Of the Management and Control of the Harbor of Port-aux-Basques.

SECTION

- 1.—Harbor Master for Port-aux-Basques.
- 2.—Harbor dues.
- 3.—Anchorage in harbor.
- 4.—Fouling of buoys.
- 5.—Fouling telegraph cable.
- 6.—Removal of vessel to make room for disabled vessel.
- 7.—Powers of Harbor Master in cases of disputes.
- 8.—Power of Harbor Master to order removal.
- 9.—Duty of Harbor Master as to fairway of harbour.

SECTION

- 10.—Powers of Harbor Master when order disobeyed.
- 11.—Vessels landing ballast or coal to protect harbor.
- 12.—Powers of Harbor Master in respect of vessels lying up.
- 13.—Watchman and light.
- 14.—Towline and hawser.
- 15.—The throwing overboard of ballast.
- 16.—Penalty for depositing ballast or rubbish in harbor.
- 17.—Penalties.
- 18.—Recovery of penalties.

1. The Governor in Council shall appoint a Harbor Master for the port of Port aux Basques.

2. All vessels arriving at the port of Port aux Basques shall, at the time of their being entered at the Custom House, pay to the collector of said port the following amounts as harbor dues, that is to say:—

Vessels from 60 tons upwards, and not more than 100 tons	\$1 50
Vessels from 100 to 200 tons	2 50
Vessels from 200 to 300 tons	4 00
Vessels from 300 to 400 tons	5 00
Vessels of more than 400 tons	6 00

All British ships and all vessels owned in the Colony, if under 60 tons, or if engaged in the fisheries of the Colony, shall be free. And provided that no vessel shall be compelled to pay any harbor dues more than once in every half-year, namely: once between the first day of January and the 30th day of June, and once between the 30th day of June and the first day of January.

3. Vessels entering Port aux Basques shall not anchor to swing west of a line drawn from the west point of Road Island to the west point of Wood Island.

4. Any vessel fouling or removing any of the buoys or aids to navi-

gation of the port shall inform the Harbor Master of the fact as soon as possible, and have same replaced at said vessel's expense.

5. Any vessel fouling the telegraph cable shall report same to the Harbor Master without delay, and shall be guided by his instructions and carry out any orders made by him in reference thereto.

6. In the event of a disabled vessel entering Port aux Basques, the Harbour Master may order the removal to other positions of any vessels should the safety of such disabled vessel in his opinion require such removal.

7. In case of any dispute arising relative to the mooring, hauling or removing of vessels in said port, the Harbor Master shall, if called upon, give such directions in respect to the same as the circumstances of the case shall demand; and all persons having the charge or command of such vessels shall comply with the directions of the Harbor Master, under a penalty of twenty dollars for every neglect or refusal to do so.

8. The Harbor Master may order the removal of any vessel moored in such a manner or situation as to be unsafe or dangerous to any other vessel.

9. The Harbor Master shall direct that the fairway and entrance of the harbor be kept clear for the safe ingress and egress of vessels; and also that the approach to the wharves be kept clear for mail steamers on their arrival and departure; and he may, upon complaint, make such order respecting the mooring or removal of vessels as may be necessary to provide for the free navigation of the port.

10. If any vessel shall not be immediately removed by the owner, master or person in charge when ordered so to be, the Harbor Master may employ men to remove or assist in removing such vessel as required, or as may be necessary, and the expenses of such removal shall be borne by the vessel or her owners.

11. All vessels loading or discharging coal, ballast, stone, gravel, earth, and similar articles shall have a sufficient piece of canvas or tarpaulin, or be provided with other sufficient appliances, so placed as to prevent the same from falling into the harbor, under penalty of twenty dollars for every offence, to be paid by the owner, master, or person in charge of such vessel.

12. The Harbor Master may direct all vessels lying up with sails unbent, with main boom or jib-boom rigged out, to have the same rigged in; and all accidents to such vessels resulting from the main boom or jib-boom being rigged out contrary to the provisions of this section shall be at the risk of the owner of such vessels.

13. Any vessel anchored in the said port, and not lying at a wharf, shall have a person on board to take care of her by day and night, and shall have a bright light burning at least six feet above the upper deck, from sunset to sunrise, unless specially exempted by the Harbor Master.

14. No vessel shall, when anchored in the stream, have any tow line or hawser, or be in any way made fast or connected to any wharf, except for the purpose of hauling in or out, without the approval of the Harbor Master.

15. No ballast, stone, gravel, earth or rubbish of any kind, shall be thrown overboard from any vessel into the harbor of Port aux Basques, or at the entrance thereof, (except in places, if any, set apart for the purpose by the Harbor Master), under a penalty of twenty dollars for every offence to be paid by the owner, master or other person having charge of the said vessel.

16. No person shall throw any ballast, stone, gravel, earth or rubbish of any kind into the waters of the said harbor, nor at the entrance thereof, nor deposit the same on the shores thereof below high water mark, under a penalty of twenty dollars for every offence.

17. Any person violating any of the provisions of this Chapter, or disobeying the lawful commands or directions of the Harbor Master made under this Chapter, for which violation no penalty is hereinbefore prescribed, shall be subject to a penalty of twenty dollars.

18. All penalties under this Chapter shall be recovered with costs in a summary manner before a Stipendiary Magistrate, and shall be appropriated, one half to the person giving information of the offence and one half to the Minister of Finance for the use of the Colony.

CHAPTER 183.

Of the Management and Control of the Harbor
of Grand Bank.

SECTION

- 1.—Appointment of Board of Harbor Commissioners for Grand Bank.
- 2.—Duties of Board; penalty for disobedience to Board.

SECTION

- 3.—Channel to be kept clear.
- 4.—Board may make rules and regulations.
- 5.—Expenditure and accounts.
- 6.—Recovery and disposition of penalties.

1. The Governor in Council may appoint a Board of five members to be a Board of Harbor Commissioners for the port of Grand Bank; one of said Board to be by them appointed or elected, shall be the chairman thereof.

2. It shall be the duty of the said Board to decide all disputes relative to the mooring, hauling or removing vessels in said port. All persons having charge or command of vessels shall obey all directions given by said Board, or by any person lawfully authorized by them in their behalf, under a penalty of twenty dollars for each offence.

3. The said Board shall direct that the fairway of the channel and the entrance of the port be kept clear for the safe ingress and egress of vessels, and that the approach to the public wharf be unobstructed; and they may, on complaint, make such order respecting the mooring or removal of vessels as may be necessary for the free navigation of the harbor, and may remove such vessels at the cost and expense of the owners thereof.

4. The said Board may make such rules and regulations respecting the use of the public wharf, and otherwise in respect to the use and control of the harbor as shall be necessary, which said rules and regulations, after the approval of the Governor in Council, shall have the effect of law, and shall be published in the *Royal Gazette*, and shall also be posted and kept posted in some conspicuous place on said wharf.

5. All moneys in the hands of the Board shall be expended as the Board think desirable in the improvement of the Harbor of Grand Bank. Reports of receipts and expenditure shall be furnished both Houses of the Legislature annually.

6. Penalties under this Chapter shall be recovered in a summary manner before a Justice of the Peace, on the complaint of the **Chairman** of the Board, and the amount of all penalties shall be paid into the funds of the Board.

TITLE XXVII.

OF TRADE AND COMMERCE.

CHAPTER 184.

Of the Sale of Goods.

SECTION

- 1.—Formation of contract ; contract of sale.
- 2.—Capacity to buy and sell ; sale of necessities ; necessities defined.
- 3.—Form of contract ; saving as to c r p rations.
- 4.—Sale of goods over \$50 in value ; application of section ; acceptance.
- 5.—Contract of sale may be for existing or future goods, or for goods not yet acquired by seller ; contract for sale of future goods operates as agreement to sell.
- 6.—Avoidance of contract f r sale of non-existing goods.
- 7.—Avoidance of contract where goods perish before risk attaches o buyer.
- 8.—Price may be fixed or not ; where not fixed must be reasonable.
- 9.—If price to be fixed by valuation of third party and valuation not made, contract avoided ; proviso ; where valuation prevented by fault of seller or buyer action may be maintained.
- 10.—Time of payment not to be of the essence ; " month."
- 11.—Non-fulfilment of condition may be waived or treated as breach of warranty ; effect of breach of stipulation to depend on construction of contract ; stipulation may be a condition though called a warranty ; where contract of sale not severable, or property in goods has passed to buyer, breach of condition can only be treated as breach of warranty ; execution of impossible, &c., contracts.
- 12.—Implication in contract of sale of : right to sell ; warranty of quiet possession by buyer ; warranty that goods are free of encumbrance.
- 13.—Warranty in cases of sales by description or sample.
- 14.—No implied warranty of fitness of goods for particular purpose, except where goods are sold for particular purpose ; proviso as to sales under patent or trade name ; implied condition in sale by dealer that goods shall be of merchantable quality ; if buyer has examined goods no implied condition as to defects ; warranty or condition as to quality may be annexed by usage of trade ; express warranty does not negative implied warranty unless inconsistent.

SECTION

- 15.—Sale by sample ; bulk to correspond with sample ; buyer to have reasonable opportunity of comparing bulk with sample ; implied condition that goods shall be free from defect not apparent on reasonable examination of sample.
- 16.—In case of sale of unascertained goods no property passes until goods ascertained.
- 17.—In case of sale of specific or ascertained goods transfer of property takes place according to intention of contract ; rules for ascertaining intention of parties.
- 18.—Rules for ascertaining time at which property to pass ; in unconditional contract for sale property passes when contract is made ; where something is to be done to put goods in deliverable state, property does not pass until such thing is done and notified to buyer ; where in contract of sale of specified goods seller is bound to weigh, &c., no property passes until thing is done and notified to buyer ; when goods delivered on approval, &c., property passes ; when buyer adopts the transaction specifically or by implication ; where unascertained or future goods are appropriated to the contract by seller or buyer ; property passes to buyer ; goods delivered to buyer, carrier or bailee, and out of disposal of seller, are appropriated to the contract
- 19.—Seller may reserve the right of disposal¹ of goods appropriated to contract on condition : When condition fulfilled property passes to buyer ; Goods deliverable to order of seller are at his disposal ; Where bill of lading and bill of exchange sent to buyer together, if buyer does not accept he is bound to return bill of lading.
- 20.—Goods at seller's risk until property passes to Buyer, and therefrom at buyer's risk : Proviso.
- 21.—Buyer acquires no better title than seller has to give.
- 22.—Saving as to statutory right of apparent owner to sell ; Saving as to sales under common law, or statutory power or order of Court.

SECTION

- 23.—Where seller's title voidable but not avoided at time of sale, purchaser without notice acquires good title.
- 24.—Property in stolen goods reverts in owner on conviction of offender; Property in goods obtained by fraud not amounting to larceny does not revert in owner by reason only of conviction of offender.
- 25.—Delivery or transfer of goods to *bona fide* purchaser by person in possession of goods or of title deeds shall have effect as if seller expressly authorized to make transfer; a person receiving goods from a person in possession of goods or of documents of title, without notice of lien or right of original seller, acquires title as if goods or documents were in the possession of seller with consent of owner; "mercantile agent."
- 26.—Writ of execution binds goods of judgment debtor from date of delivery of writ to sheriff for execution; proviso; "sheriff."
- 27.—Goods to be delivered and paid for according to contract of sale.
- 28.—Delivery of goods and payment of price concurrent conditions, unless otherwise agreed.
- 29.—Whether buyer is to take possession or seller to send for goods depends on the contract; apart from contract place of delivery is seller's place of business or residence; proviso; where seller bound to send goods within a reasonable time where goods are in possession of third person there is no delivery until he acknowledges that he holds on behalf of buyer; saving as to transfer of documents of title; demand or tender of delivery must be made at a reasonable hour; seller must put goods in deliverable state.
- 30.—Where goods short delivered buyer may reject or pay *pro rata*; where larger quantity than contracted for delivered buyer may accept goods included in contract and reject the rest, or, if he accepts all, must pay *pro rata*, where goods contracted for mixed with others buyer may reject other goods or the whole; saving as to usage of trade.
- 31.—Buyer not bound to accept delivery by instalments, unless otherwise agreed; where goods are to be delivered by instalments and default is made in delivery of an instalment, whether breach is repudiation of whole contract or severally is a question of construction.
- 32.—Delivery to carrier is *prima facie* delivery to buyer in certain cases; unless otherwise authorized seller must make such contract with carrier as may be reasonable under circumstances; if seller omits to make such contract and goods lost or damaged, buyer may decline to treat delivery to carrier as delivery to himself, or may claim damages; if goods sent by sea, seller must notify buyer so that he may insure.
- 33.—If seller is to deliver goods at his own risk buyer must take risk of deterioration incident to transit.
- 34.—If goods delivered to buyer without examination, he is not deemed to have accepted them until he has had an opportunity of examining them; where seller tenders delivery of goods to buyer, he is bound to afford to buyer a reasonable opportunity of examining them.
- 35.—Buyer deemed to have accepted goods when he notifies seller, &c.
- 36.—Buyer who rightfully rejects goods delivered not bound to return them.
- 37.—Liability to buyer who wrongly refuses to take delivery when tendered.

SECTION

- 38.—"Unpaid seller;" seller.
- 39.—Unpaid seller has, by application of law; a lien on the goods while he is in possession; right of stoppage in transitu; a limited right of re-sale; additional remedies of unpaid seller.
- 40.—Unpaid seller entitled to retain possession until payment; where goods not sold on credit; where goods sold on credit and time has expired; where buyer insolvent, seller may exercise lien when he is in position of agent for buyer.
- 41.—Where part of goods delivered, seller may exercise lien on remainder under certain circumstances.
- 42.—Unpaid seller loses lien—(a) when he delivers goods to carrier without reserving right of disposal; (b) when buyer lawfully obtains possession of goods; (c) by waiver; judgment for price of goods does not merge lien.
- 43.—Right of unpaid seller to stop goods in transitu.
- 44.—Transit; if buyer obtain delivery of goods before they arrive at their destination the transit is at an end; if when goods arrive carrier acknowledges that he holds possession of them as bailee for buyer, transit determined; if goods are rejected by buyer and carrier, &c., continues in possession, transit not determined; goods delivered to ship chartered by buyer may or may not be in possession of master as carrier; when carrier, &c., wrongfully refuses to deliver goods to buyer, transit deemed to be at an end; in certain cases when part of goods has been delivered remainder may be stopped in transitu.
- 45.—Right of stoppage in transitu may be exercised either by taking possession of goods or by notifying carrier as bailee in possession; on receipt of notice of stoppage in transitu, goods must be delivered to seller.
- 46.—Right of lien or stoppage in transitu not effected by sale by buyer; provided that lien or right of stoppage is defeated by transfer of document of title to goods to *bona fide* purchaser for value.
- 47.—Contract of sale not rescinded by exercise of right of lien or stoppage in transitu by seller; seller who shall have exercised his right of lien or stoppage in transitu may give good title to new buyer; if unpaid seller gives notice of his intention to re-sell and buyer does not pay or tender price, goods may be sold and original buyer shall be liable in damages for breach of contract; exercise of right of re-sale rescinds original contract.
- 48.—Where property has passed to buyer under contract of sale action may be maintained against him for prices; where price payable irrespective of delivery action may be maintained although property has not passed.
- 49.—Damages may be recovered for non-acceptance; measure of damages; ascertainment of damages where there is an available market for goods.
- 50.—Action may be maintained for non-delivery; increases of damages; ascertainment of damages where there is an available market.
- 51.—In actions for damages for non-delivery of specific goods Court may decree specific performance.
- 52.—Buyer is not by reason only of breach of warranty entitled to reject the goods; measure of damages for breach of warranty; damages in case of breach of warranty of quality; action may be maintained for breach of warranty

SECTION

- notwithstanding that breach set up in diminution or extinction of price.
- 53.—Act not to affect right to interest or special damage, or money paid where consideration has failed.
- 54.—Implications of law may be negatived by express agreement or by usage of trade.
- 55.—Reasonable time, question of fact.
- 56.—Rights, &c., declared may be enforced by action.
- 57.—Sales by auction; each lot subject of separate contract of sale; sale not complete until auctioneer announces; seller may not bid at auction unless his right to bid is expressly notified; sale may be notified to be subject to reserve price.

SECTION

- 58.—Application of provisions of insolvency law; rules of common law, where not inconsistent with this Chapter to continue to apply to contracts of sale; provisions relating to contracts of sale do not apply to transactions intended to operate as mortgages, &c.
- 59.—“Action,” “Buyer,” “Contract of sale,” “Delivery,” “Document of title to goods,” “Fault,” “Future goods,” “Goods,” “Property,” “Quantity of goods,” “Sale,” “Seller,” “Specific goods,” “Warranty,” “In good faith,” “Insolvent,” “Deliverable state.”
- 60.—Short title.

PART I.

FORMATION OF THE CONTRACT.

Contract of Sale.

1. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. There may be a contract of sale between one part owner and another.
- (2) A contract of sale may be absolute or conditional.
- (3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.
- (4) An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.

2. Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Provided that where necessaries are sold and delivered to an infant or minor, or to a person who by reason of mental incapacity or drunkenness, is incompetent to contract, he must pay a reasonable price therefor.

Necessaries in this section mean goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.

Formalities of the Contract.

3. Subject to the provisions of this Chapter and of any other Act

in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. Provided that nothing in this section shall affect the law relating to corporations.

4. (1) A contract for the sale of any goods of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf.
- (2) The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.
- (3) There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognizes a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not.

Subject Matter of Contract.

5. (1) The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Chapter called "future goods."
 - (2) There may be a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.
 - (3) Where by a contract of sale, the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods.
6. Where there is a contract for the sale of specific goods, and the

goods without the knowledge of the seller have perished at the time when the contract is made, the contract is void.

7. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided.

The Price.

8. (1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

9. (1) Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided; provided that if the goods or any part thereof have been delivered to and appropriated by the buyer, he must pay a reasonable price therefor.

(2) Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault.

Conditions and Warranties.

10. (1) Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

(2) In a contract of sale "month" means *prima facie* calendar month.

11. (1) (a) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the con-

dition or may elect to treat the breach of such condition as a breach of warranty, and not as a ground for treating the contract as repudiated.

- (b) Whether a stipulation in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in the contract.
- (c) Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract, express or implied, to that effect.
- (2) Nothing in this section shall affect the case of any condition or warranty, fulfilment of which is excused by law by reason of impossibility or otherwise.

12. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is—

- (1) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he will have a right to sell the goods at the time when the property is to pass;
- (2) An implied warranty that the buyer shall have and enjoy quiet possession of the goods;
- (3) An implied warranty that the goods shall be free from any charge or encumbrance in favor of any third party, not declared or known to the buyer before or at the time when the contract was made.

13. Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description, it is not

sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

14. Subject to the provisions of this Chapter and of any other Act in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

- (1) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;
- (2) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;
- (3) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (4) An express warranty or condition does not negative a warranty or condition implied by this Chapter unless inconsistent therewith.

SALE BY SAMPLE.

- 15.** (1) A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.
- (2) In the case of a contract for sale by sample—
- (a) There is an implied condition that the bulk shall correspond with the sample in quality;

- (b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

PART II.

EFFECTS OF THE CONTRACT.

Transfer of Property as between Seller and Buyer.

16. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained.

17. (1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

18. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1.—Where there is an unconditional contract for the sale of specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery, or both, be postponed.

Rule 2.—Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing be done and the buyer has notice thereof.

Rule 3.—Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the

goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done, and the buyer has notice thereof.

Rule 4.—When goods are delivered to the buyer on approval or “on sale or return,” or other similar terms, the property therein passes to the buyer:

- (1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;
- (2) If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 5.—(1) Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made.

- (2) Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.

19. (1) Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods, until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

- (2) Where goods are shipped, and by the bill of lading the goods are

deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

- (3) Where the seller of the goods draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him.

20. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. Provided, also, that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party.

TRANSFER OF TITLE.

- 21.** (1) Subject to the provisions of this Chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

22. Nothing in this Chapter shall affect—

- (1) The provisions of any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;
- (2) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.

23. When the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods; provided he buys them in good faith and without notice of the seller's defect of title.

- 24.** (1) Where goods have been stolen and the offender is prosecuted to conviction, the property in the goods so stolen reverts in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them, whether by sale in market overt or otherwise.
- (2) Notwithstanding any enactment to the contrary where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revert in the person who was the owner of the goods or his personal representative, by reason only of the conviction of the offender.
- 25.** (1) Where a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.
- (2) Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.
- (3) In this section the term "mercantile agent" means a mercantile agent, having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods.
- 26.** (1) A writ of *fieri facias* or other writ of execution against

goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ, to endorse upon the back thereof the hour, day, month, and year when he received the same.

Provided that no such writ shall prejudice the title of such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff.

- (2) In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution.

PART III.

PERFORMANCE OF THE CONTRACT.

27. It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale.

28. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

- 29.** (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and, if not, his residence: Provided, that if the contract be for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

- (2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.
 - (3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf: Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.
 - (4) Demand or tender of delivery may be treated as ineffectual, unless made at a reasonable hour. What is a reasonable hour is a question of fact.
 - (5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.
- 30.** (1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them; but if the buyer accepts the goods so delivered he must pay for them at the contract rate.
- (2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.
 - (3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.
 - (4) The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.
- 31.** (1) Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments.
- (2) Where there is a contract for the sale of goods to be delivered by stated instalments, which are to be separately paid for,

and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract, and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

32. (1) Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is *prima facie* deemed to be a delivery of the goods to the buyer.

(2) Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

(3) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such sea transit.

33. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must, nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit.

34. (1) Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

- (2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

35. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

36. Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them.

37. When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

PART IV.

RIGHTS OF UNPAID SELLER AGAINST THE GOODS.

- 38.** (1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Chapter:

- (a) When the whole of the price has not been paid or tendered;
- (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise.

(2) In this part of this Chapter the term "seller" includes any person who is in the position of a seller, as for instance, an agent of the seller to whom the bill of lading has been endorsed, or a

consignor or agent who has himself paid, or is directly responsible for, the price.

39. (1) Subject to the provisions of this Chapter, and of any other Act in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, has by implication of law—

- (a) A lien on the goods for the price while he is in possession of them;
- (b) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;
- (c) A right of re-sale as limited by this Chapter.

(2) Where the property in goods has not passed to the buyer the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

Unpaid Seller's Lien.

40. (1) Subject to the provisions of this Chapter, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:—

- (a) Where the goods have been sold without any stipulation as to credit;
- (2) The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

41. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an agreement to waive the lien.

42. (1) The unpaid seller of goods loses his lien thereon:
- (a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods;
 - (b) When the buyer or his agent lawfully obtains possession of the goods;
 - (c) By waiver thereof.
- (2) The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment for the price of the goods.

Stoppage in Transitu.

43. Subject to the provisions of this Chapter, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price.

44. (1) Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf, takes delivery of them from such carrier or other bailee.
- (2) If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end.
- (3) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent, that he holds the goods on his behalf and continues in possession of them as bailee for the buyer, or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer.
- (4) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back.

- (5) When goods are delivered to a ship chartered by the buyer it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer.
- (6) Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer, or his agent in that behalf, the transit is deemed to be at an end.
- (7) Where part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods.

45. (1) The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer.

- (2) When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must re-deliver the goods to, or according to the directions of, the seller. The expenses of such re-delivery must be borne by the seller.

Re-sale by Buyer or Seller.

46. Subject to the provisions of this Chapter, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then, if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of

lien or stoppage in transitu can only be exercised subject to the rights of the transferee.

- 47.** (1) Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or stoppage *in transitu*.
- (2) Where an unpaid seller who has exercised his right of lien or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer.
- (3) Where the goods are of a perishable nature, or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract.
- (4) Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages.

PART V.

ACTIONS FOR BREACH OF THE CONTRACT.

Remedies of the Seller.

- 48.** (1) Where, under a contract of sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods.
- (2) Where, under a contract of sale, the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract.
- 49.** (1) Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance.

- (2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.
- (3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

Remedies of the Buyer.

- 50.** (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.
- (2) The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract.
 - (3) Where there is an available market for the goods in question, the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver.

51. In any action for breach of contract to deliver specific or ascertained goods, the Court may if it thinks fit, on the application of the plaintiff, by its judgment direct that the contract shall be performed specifically, without giving the defendant the option of retaining the goods on payment of damages. The judgment may be unconditional, or upon such terms and conditions as to damages, payment of the price, and otherwise, as to the Court may seem just, and the application by the plaintiff may be made at any time before judgment.

- 52.** (1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may
- (a) Set up against the seller the breach of warranty in diminution or extinction of the price; or

- (b) Maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (3) In the case of breach of warranty of quality such loss is *prima facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty.
- (4) The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage.

53. Nothing in this Chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

PART VI.

SUPPLEMENTARY.

54. Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage be such as to bind both parties to the contract.

55. Where by this Chapter any reference is made to a reasonable time, the question what is a reasonable time is a question of fact.

56. Where any right, duty or liability is declared by this Chapter, it may unless otherwise by this Chapter provided, be enforced by action.

57. In the case of a sale by auction—

- (1) Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
- (2) A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary

manner. Until such announcement is made any bidder may retract his bid;

(3) Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer;

(4) A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller. Where a right to bid is expressly reserved, but not otherwise, the seller, or any one person on his behalf, may bid at the auction.

58. (1) The provisions of the law of insolvency relating to contracts of sale shall continue to apply thereto notwithstanding anything in this Chapter contained.

(2) The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Chapter, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods.

(3) The provisions of this Chapter relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security.

59. (1) In this Chapter, unless the context or subject matter otherwise requires,—

“Action” includes counterclaim and set off;

“Buyer” means a person who buys or agrees to buy goods;

“Contract of sale” includes an agreement to sell as well as a sale;

“Delivery” means voluntary transfer of possession from one person to another;

“Document of title to goods” includes any bill of lading, dock warrant, warehouse-keeper’s certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

“Fault” means wrongful act or default;

“Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale;

“Goods” include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;

“Property” means the general property in goods, and not merely a special property;

“Quality of goods” includes their state or condition;

“Sale” includes a bargain and sale as well as a sale and delivery;

“Seller” means a person who sells or agrees to sell goods;

“Specific goods” means goods identified and agreed upon at the time a contract of sale is made;

“Warranty” means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

(2) A thing is deemed to be done “in good faith” within the meaning of this Chapter when it is in fact done honestly, whether it be done negligently or not.

(3) A person is deemed to be insolvent within the meaning of this Chapter who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has been declared insolvent or not.

- (4) Goods are in a "deliverable state" within the meaning of this Chapter when they are in such a state that the buyer would under the contract be bound to take delivery of them.

60. This Chapter may be cited as the "Sale of Goods' Act."

CHAPTER 185.

Of Bills of Exchange Cheques and Promissory Notes.

SECTION

- 1.—Interpretation of terms.
- 2.—Bill of Exchange defined.
- 3.—Inland and foreign Bills
- 4.—Effect where different parties to Bill are the same person.
- 5.—Address of drawee.
- 6.—Certainty required as to payee.
- 7.—What Bills are negotiable.
- 8.—Sum payable.
- 9.—Bill payable on demand.
- 10.—Bill payable at a future time.
- 11.—Omission of date in Bill payable after date.
- 12.—Ante-dating and post-dating.
- 13.—Computation of time of payment.
- 14.—Case of need.
- 15.—Optional stipulations by drawer or indorser.
- 16.—Definition and requisites of acceptance.
- 17.—Time for acceptance.
- 18.—General and qualified acceptances.
- 19.—Inchoate instruments.
- 20.—Delivery.
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PART I.

PRELIMINARY.

1. In this Chapter, unless the context otherwise requires:—

“Acceptance” means an acceptance completed by delivery or notification.

“Action” includes counter-claim and set-off.

“Banker” includes a body of persons, whether incorporated or not, who carry on the business of banking.

“Insolvent” includes any person whose estate is vested in a trustee or assignee, under the law for the time being in force relating to insolvency.

“Bearer” means the person in possession of a bill or note which is payable to bearer.

“Bill” means bill of exchange, and “Note” means promissory note.

“Delivery” means transfer of possession, actual or constructive, from one person to another.

“Holder” means the payee or endorsee of a bill or note who is in possession of it, or the bearer thereof.

“Indorsement” means indorsement completed by delivery.

“Issue” means the first delivery of a bill or note complete in form, to a person who takes it as a holder.

“Person” includes a body of persons, whether incorporated or not.

“Value” means valuable consideration.

“Written” includes printed, and “writing” includes print.

“Colony” signifies Newfoundland and its Dependencies.

PART II.

BILLS OF EXCHANGE—FORM AND INTERPRETATION.

- 2.** (1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.
- (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.
- (3) An order to pay out of a particular fund is not unconditional

within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason:

(*a*) That it is not dated.

(*b*) That it does not specify the value given, or that any value has been given therefor.

(*c*) That it does not specify the place where it is drawn, or the place where it is payable.

3. (1) An inland bill is a bill which is, or on the face of it purports to be (*a*) both drawn and payable within the Colony, or (*b*) drawn within the Colony upon some person resident therein. Any other bill is a foreign bill.

(2) Unless the contrary appear on the face of the bill, the holder may treat it as an inland bill.

4. (1) A bill may be drawn payable to, or to the order of the drawer; or it may be drawn payable to or to the order of the drawee.

(2) Where, in a bill, drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument at his option, either as a bill of exchange or as a promissory note.

5. (1) The drawee must be named or otherwise indicated in a bill, with reasonable certainty.

(2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange.

6. (1) Where a bill is not payable to bearer, the payee must be

named or otherwise indicated therein, with reasonable certainty.

- (2) A bill may be made payable to two or more payees, jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.
- (3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.
- 7. (1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.
- (2) A negotiable bill may be payable either to order or to bearer.
- (3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.
- (4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should be transferable.
- (5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.
- 8. (1) The sum payable by a bill is a sum certain within the meaning of this Chapter, although it is required to be paid:
 - (a) With interest.
 - (b) By stated instalments.
 - (c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.
 - (d) According to an indicated rate of exchange, or according to a rate of exchange, to be ascertained as directed by the bill.
- (2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

- (3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof.

9. (1) A bill is payable on demand:

(a) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b) In which no time for payment is expressed.

- (2) Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so endorses it, be deemed a bill payable on demand.

10. A bill is payable at a determinable future time, within the meaning of this Chapter, which is expressed to be payable:

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

(3) An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

11. Where a bill, expressed to be payable at a fixed period after date, is issued undated, or where the acceptance of a bill, payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that, (1) where the holder in good faith and by mistake inserts a wrong date; and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

12. (1) Where a bill, or an acceptance, or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

13. Where a bill is not payable on demand, the day on which it falls due is determined as follows:

- (1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; provided that
 - (a) When the last day of grace falls on Sunday, Good Friday, Christmas Day, the King's Birth-day, or the day appointed to be kept in its place; any day appointed by proclamation of the Governor as a public fast or thanksgiving day, public holiday, New Year's Day, or the day after Christmas Day, and the day after New Year's Day, when these days fall on Sundays, the bill is payable and due on the succeeding business day.
- (2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and including the day of payment.
- (3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance, if the bill be accepted and from the date of noting or protest, if the bill be noted or protested for non-acceptance, or for non-delivery.
- (4) The term "month" in a bill, means calendar month.

14. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may think fit.

15. The drawer of a bill and any indorser may insert therein an express stipulation:

- (1) Negating or limiting his own liability to the holder;
- (2) Waiving, as regards himself, some or all of the holder's duties.

16. (1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(a) It must be written on the bill, and signed by the drawee. The mere signature of the drawee, without additional words, is sufficient.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

17. A bill may be accepted:

(1) Before it has been signed by the drawer, or while otherwise incomplete.

(2) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment.

(3) When a bill, payable after sight, is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

18. (1) An acceptance is either (a) general, or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular, an acceptance is qualified which is:

(a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated.

(b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn.

(c) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

(d) Qualified, as to time.

- (e) The acceptance of some one or more of the drawees, but not of all.

- 19.** (1) Where a simple signature on a blank paper is delivered by the signer, in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or the acceptor, or an indorser, and in like manner when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.
- (2) In order that any such instrument, when completed, may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact. Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.
- 20.** (1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable until delivery of the instrument, in order to give effect thereto: Provided that, when an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of the person entitled to the bill, that he has accepted it, the acceptance then becomes complete and irrevocable.
- (2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—
- (a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;
- (b) May be shewn to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the bill; but if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior

to him, so as to make them liable to him, is conclusively presumed.

- (3) Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES.

- 21.** (1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract; provided, that nothing in this section shall enable a corporation to make itself liable as a drawer, acceptor, or indorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to corporations.

- (2) Where a bill is drawn or indorsed by an infant, minor or corporation, having no capacity or power to incur liability on a bill, the drawing or endorsement entitle the holder to receive payment of the bill and to enforce it against any other party thereto.

22. No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such. Provided that

- (1) Where a person signs a bill in a trade or an assumed name, he is liable thereon as if he had signed it in his own name:
- (2) The signature of a name of a firm is equivalent to the signature, by the person so signing, of the names of all persons so liable as partners in that firm.

23. Subject to the provisions of this Chapter, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority: provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

24. A signature by procuration operates as notice that the agent

has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

- 25.** (1) Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent or as filling a representative character does not exempt him from personal liability.
- (2) In determining whether a signature on a bill is that of the principal or that of the agent; or by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

THE CONSIDERATION FOR A BILL.

- 26.** (1) Valuable consideration for a bill may be constituted by:
- (a) Any consideration sufficient to support a simple contract;
 - (b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time.
- (2) Where value has at any time been given for a bill, the holder is deemed to be a holder for value as regards the acceptor, and all parties to the bill who became parties prior to such time.
- (3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

27. (1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

- (2) An accommodation party is liable on the bill to a holder for value, and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

- 28.** (1) A holder in due course is a holder who has taken a bill

complete and regular on the face of it, under the following conditions namely:

- (a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact: -
 - (b) That he took the bill in good faith, and for value, and that, at the time the bill was negotiated to him, he had no notice of any defect in the title of the person who negotiated it.
- (2) In particular, the title of a person who negotiates a bill is defective, within the meaning of this Chapter, when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.
- (3) A holder, (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor, and all parties to the bill, prior to that holder.
- 29.** (1) Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.
- (2) Every holder of a bill is *prima facie* deemed to be a holder in due course, but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force or fear, or illegality, the burden of proof is shifted, unless and until the holder proves that subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

NEGOTIATION OF BILLS.

- 30.** (1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.
- (2) A bill payable to bearer is negotiated by delivery.
- (3) A bill payable to order is negotiated by the indorsement of the holder, completed by delivery.

- (4) Where the holder of a bill payable to his order transfers it for value, without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee, in addition, acquires the right to have the indorsement of the transferor.
- (5) Where any person is under obligation to indorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability.

31. An indorsement, in order to operate as a negotiation, must comply with the following conditions, namely:

- (1) It must be written on the bill itself, and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient. An indorsement written on an allonge, or on a "copy" of a bill, issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.
- (2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the **amount payable**, or which purports to transfer the bill to two or more indorsees, severally, does not operate as a negotiation of the bill.
- (3) Where a bill is payable to the order of two or more payees or indorsees, who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.
- (4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is mis-spelt, he may indorse the bill as therein described, adding, if he thinks fit, his proper signature.
- (5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.
- (6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

32. Where a bill purports to be indorsed conditionally, the condi-

tion may be disregarded by the payer, and payment to the indorsee is valid, whether the condition has been fulfilled or not.

- 33.** (1) An indorsement in blank specifies no indorsee, and a bill so endorsed becomes payable to bearer.
- (2) A special indorsement specifies the person to whom or to whose order the bill is to be payable.
- (3) The provisions of this Chapter relating to a payee apply, with the necessary modifications, to an indorsee, under a special indorsement.
- (4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement, by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.
- 34.** (1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof; as, for example, if a bill be indorsed "pay D. only," or "pay D. for the account of X," or "pay D. or order for collection."
- (2) A restrictive indorsement gives the indorsee the right to receive payment of the bill, and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as indorsee, unless it expressly authorizes him to do so.
- (3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee, under the restrictive indorsement.
- 35.** (1) Where a bill is negotiable in its origin, it continues to be negotiable until it has been (a) restrictively indorsed; or (b) discharged by payment or otherwise.
- (2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from which he took it had.

- (3) A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.
- (4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.
- (5) Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour, takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this sub-section shall affect the rights of a holder in due course.

36. Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Chapter, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

37. The rights and powers of a holder of a bill are as follows:

- (1) He may sue on the bill in his own name.
- (2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill.
- (3) Where his title is defective, (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill and (b) if he obtains payment of the bill, the person who pays him, in due course, gets a valid discharge for the bill.

GENERAL DUTIES OF THE HOLDER.

- 38.** (1) Where a bill is payable after sight, presentment for acceptance is necessary, in order to fix the maturity of the instrument.

- (2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.
- (3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.
- (4) Where the holder of a bill drawn payable elsewhere than at the place of business or residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawee or endorsers.
9. (1) Subject to the provisions of this Chapter, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.
- (2) If he do not do so, the drawer, and all indorsers prior to that holder, are discharged.
- (3) In determining what is a reasonable time, within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.
40. (1) A bill is duly presented for acceptance which is presented in accordance with the following rules:
- (a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue.
- (b) Where a bill is addressed to two or more drawees who are not partners presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only.
- (c) Where the drawee is dead, presentment may be made to his personal representative.

- (d) Where the drawee is insolvent, presentment may be made to him or to his trustee, or his assignee.
 - (e) Where authorized by agreement or usage, a presentment through the post office is sufficient.
- (2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—
- (a) Where the drawee is dead or insolvent, or is a fictitious person, or a person not having capacity to contract by bill.
 - (b) Where, after the exercise of reasonable diligence, such presentment cannot be effected.
 - (c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.
- (3) The fact that the holder has reason to believe that the bill on presentment will be dishonoured, does not excuse presentment.

41. When a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

42. (1) A bill is dishonoured by non-acceptance,—

- (a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Chapter is refused, or cannot be obtained; or
 - (b) When presentment for acceptance is excused, and the bill is not accepted.
- (2) Subject to the provisions of this Chapter, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

43. (1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, may treat the bill as dishonoured by non-acceptance.

- (2) Where a qualified acceptance is taken, and the drawer or indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this sub-section do not apply to a partial acceptance whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.
- (3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not, within a reasonable time, express his dissent to the holder, he shall be deemed to have assented thereto.

44. Subject to the provisions of this Chapter, a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:

- (1) Where a bill is not payable on demand, presentment must be made on the day it falls due.
- (2) Where the bill is payable on demand, then, subject to the provisions of this Chapter, presentment must be made within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.
- (3) Presentment must be made by the holder, or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place, as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can be found there.
- (4) A bill is presented at the proper place:
 - (a) Where a place of payment is specified in the bill, and the bill is there presented.

- (b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.
 - (c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known.
 - (d) In any other case, if presented to the drawee or acceptor, wherever he can be found, or if presented at his last known place of business or residence.
 - (5) Where a bill is presented at the proper place, and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.
 - (6) Where a bill is drawn upon or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.
 - (7) Where the drawee or acceptor of a bill is dead, and no place for payment is specified, presentment must be made to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found.
 - (8) Where authorized by agreement or usage, a presentment through the post office is sufficient.
- 45.** (1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence; when the cause of delay ceases to be operative, presentment must be made with reasonable diligence.
- (2) Presentment for payment is dispensed with:
- (a) Where, after the exercise of reasonable diligence, presentment, as required by this Chapter, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.
 - (b) Where the drawee is a fictitious person.

- (c) As regards the drawer, where the drawee or acceptor is not bound as between himself and the drawer to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.
- (d) As regards an indorser, where the bill was accepted, or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.
- (e) By waiver of presentment, express or implied.

46. (1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained; or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Chapter, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

47. Subject to the provisions of this Chapter, when a bill has been dishonoured by non-acceptance, or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; provided that—

- (1) Where a bill is dishonoured by non-acceptance and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not to be prejudiced by the omission.
- (2) When a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

48. Notice of dishonour, in order to be valid and effectual, must be given in accordance with the following rules:—

- (1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser, who, at the time of giving it, is himself liable on the bill.
- (2) Notice of dishonour may be given by an agent, either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

- (3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.
- (4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsees subsequent to the party to whom notice is given.
- (5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.
- (6) The return of a dishonoured bill to a drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.
- (7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice, unless the party to whom the notice given is in fact misled thereby.
- (8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.
- (9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and, with the exercise of reasonable diligence, he can be found.
- (10) Where the drawer or indorser is insolvent, notice may be given either to the party himself or to the trustee or assignee.
- (11) Where there are two or more drawers or indorsers, who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.
- (12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time hereafter.

In the absence of special circumstances, notice is not deemed to have been given within a reasonable time, unless—

- (a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.
- (b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post, at a convenient hour on that day, and if there be no such post on that day, then by the next post thereafter.
- (13) Where a bill, when dishonoured, is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder.
- (14) Where a party to a bill receives due notice of dishonour, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after the dishonour.
- (15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any mis-carriage by the post office.
- 49.** (1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence.
- (2) Notice of dishonour is dispensed with—
 - (a) When, after the exercise of reasonable diligence, notice as required by this Chapter cannot be given to or does not reach the drawer or indorser sought to be charged.
 - (b) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived or after the omission to give due notice.
 - (c) As regards the drawer in the following cases, namely:—
 - (1) When the drawer and drawee are the same person; (2)

where the drawee is a fictitious person, or a person not having capacity to contract; (3) where the drawer is the person to whom the bill is presented for payment; (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; (5) where the drawer has countermanded payment.

- (d) As regards the indorser in the following cases, namely:—
(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; (2) where the indorser is the person to whom the bill is presented for payment; (3) where the bill was accepted or made for his accommodation.

50. Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be, but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

- (2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it be not so protested, the drawer and indorser are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

- (3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

- (4) Subject to the provisions of this Chapter, when a bill is noted or protested, it must be noted on the day of its dishonour; when a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

- (5) When the acceptor of a bill becomes insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

- (6) A bill must be protested at the place where it is dishonoured. Provided that—

- (a) When a bill is presented through the post office and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return if received during business hours, then not later than the next business day.
 - (b) When a bill drawn payable at the place of business or residence of some person other than the drawer, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.
- (7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—
- (a) The person at whose request the bill is protested.
 - (b) The date and place of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.
- (8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.
- (9) Protest is dispensed with by any circumstances which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.
- 51.** (1) When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.
- (2) When, by the terms of a qualified acceptance, presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.
- (3) In order to render the acceptor of a bill liable, it is not necessary

to protest it, or that notice of dishonour should be given to him.

- (4) When the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES.

52. A bill of itself does not operate as an assignment of funds in the hands of the drawee, available for the payment thereof, and the drawee of a bill who does not accept as required by this Chapter, is not liable on the instrument.

53. The acceptor of a bill by accepting it—

- (1) Engages that he will pay it according to the tenor of his acceptance;
- (2) Is precluded from denying to a holder in due course;
 - (a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.
 - (b) In the case of a bill payable to a drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;
 - (c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

54. (1) The drawer of a bill by drawing it—

- (a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided, that the requisite proceedings on dishonour be duly taken;
- (b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

- (a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he

will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

- (b) Is precluded from denying to a holder in due course, the genuineness and regularity in all respects of the drawee's signature, and all previous indorsements;
- (c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his indorsement, a valid and subsisting bill, and that he had then a good title thereto.

55. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

56. Where a bill is dishonoured, the measure of damages which shall be deemed to be liquidated damages shall be as follows:

- (1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor, or from a prior indorser—
 - (a) The amount of the bill;
 - (b) Interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;
 - (c) The expense of noting, or when protest is necessary and the protest has been extended, the expense of protest.
- (2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him the amount of the re-exchange, with interest thereon until the time of payment.
- (3) Where by this Chapter interest may be recovered as damages, such interest may, if justice require it, be withheld, wholly or in part, and where a bill is expressed to be payable with

interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

57. (1) Where the holder of a bill payable to bearer negotiates it by delivery, without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery, who negotiates a bill, thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL.

58. (1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof, if in good faith, and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged, but

(a) Where a bill payable to or to the order of a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights, as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged.

59. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith, and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made

by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

60. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

61. (1) When the holder of a bill at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged. The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder, in due course, without notice of the renunciation.

62. (1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on the bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but when a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

63. (1) When a bill or acceptance is materially altered, without the assent of all parties liable on the bill, the bill is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers. Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

- (2) In particular, the following alterations are material, namely: any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOUR.

- 64.** (1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person not being a party already liable thereon may with consent of the holder, intervene, and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
- (2) A bill may be accepted for honour for part only of the sum for which it is drawn.
- (3) An acceptance for honour *supra* protest, in order to be valid, must—
- (a) Be written on the bill, and indicate that it is an acceptance for honour:
- (b) Be signed by the acceptor for honour.
- (4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.
- (5) When a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.
- 65.** (1) The acceptor for honour of a bill, by accepting, engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee; provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.
- (2) The acceptor for honour is liable to the holder, and to all parties to the bill, subsequent to the party for whose honour he has accepted.

- 66.** (1) Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.
- (2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity and when the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.
- (3) Delay in presentment or non-presentment is excused by any circumstances which would excuse delay in presentment for payment or non-presentment for payment.
- (4) When a bill of exchange is dishonoured by an acceptor for honour, it must be protested for non-payment by him.
- 67.** (1) Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.
- (2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.
- (3) Payment for honour *supra* protest, in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it.
- (4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour and for whose honour he pays.
- (5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for and succeeds to both the rights and duties of the holder, as regards the party for whose honour he pays and all parties liable to that party.

- (6) The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest; if the holder do not, on demand, deliver them up, he shall be liable to the payer for honour in damages. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

68. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost shall be found again. If the drawer, on request as aforesaid, refuse to give such duplicate bill, he may be compelled to do so.

69. In any action or proceeding upon a bill, the Court or Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question.

BILL IN A SET.

- 70.** (1) Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.
- (2) When the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the said parts were separate bills.
- (3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between the holders, deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.
- (4) The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of

different holders in due course, he is liable on every such part as if it were a separate bill.

- (5) When the acceptor of a bill, drawn in a set, pays it without requiring the part bearing his acceptance to be delivered up to him, and the part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.
- (6) Subject to the preceding rules, when any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

CONFLICT OF LAWS.

71. Where a bill drawn in one country is negotiated, accepted or payable in another, the rights, duties and liabilities of the parties thereto are determined as follows:—

- (1) The validity of a bill as regards requisites in form is determined by the law of the place of issue; and the validity, as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made: Provided that—
 - (a) Where a bill is issued out of this Colony it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue.
 - (b) Where a bill, issued out of this Colony, conforms as regards requisites in form to the laws of this Colony, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in this Colony.
- (2) Subject to the provisions of this Chapter, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made: Provided that when an inland bill is endorsed out of this Colony, the endorsement shall, as regards the payer, be interpreted according to the law of this Colony.
- (3) The duties of the holder with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a

protest, or notice of dishonour or otherwise, are determined by the law of the place where the act is done, or the bill is dishonoured.

- (4) Where a bill is drawn out of, but payable in this Colony, and the sum payable is not expressed in the currency of this Colony, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.
- (5) Where a bill is drawn in one country and payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

72. A cheque is a bill of exchange drawn on a banker, payable on demand. Except as otherwise provided in this part, the provisions of this Chapter applicable to a bill of exchange payable on demand apply to a cheque.

73. Subject to the provisions of this Chapter—

- (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such a cheque been paid.
- (2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.
- (3) The holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such banker, to the extent of such damage, and entitled to recover the amount from him.

74. The duty and authority of a banker to pay a cheque drawn on him by his customer, are determined by—

- (1) Countermand of payment.
- (2) Notice of the customer's death.

PART IV.

PROMISSORY NOTES.

- 75.** (1) A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.
- (2) An instrument in the form of a note payable to maker's order, is not a note within the meaning of this section, unless and until it is indorsed by the maker.
- (3) A note is not invalid by reason only that it contains also a pledge of collateral security, with authority to sell or dispose thereof.
- (4) A note which is or on the face of it purports to be both made and payable within this Colony is an inland note; any other note is a foreign note.
- 76.** A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.
- 77.** (1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.
- (2) Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note.
- 78.** (1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented, the indorser is discharged.
- (2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.
- (3) Where a note, payable on demand, is negotiated, it is not deem-

ed to be overdue for the purpose of affecting the holder with defects of title, of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

79. (1) Where a promissory note is, in the body of it, made payable at a particular place, it must be presented for payment at that place, in order to render the maker liable; in any other case presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary, in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

80. The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor.

(2) Is precluded from denying to a holder in due course, the existence of the payee, and his then capacity to indorse.

81. (1) Subject to the provisions in this part, and except as by this section provided, the provisions of this Chapter relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions, the maker of a note shall be deemed to correspond with the acceptor of a bill, and first endorser of a note shall be deemed to correspond with the drawer of an accepted bill, payable to drawer's order.

(3) The following provisions, as to bills, do not apply to notes, namely, provisions relating to—

(a) Presentment for acceptance.

(b) Acceptance.

(c) Acceptance *supra* protest.

(d) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

SUPPLEMENTARY.

82. A thing is deemed to be done in good faith within the meaning of this Chapter, where it is in fact done honestly, whether it is done negligently or not.

83. (1) Where by this Chapter any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where, by this Chapter, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

84. Where by this Chapter the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. Non-business days for the purposes of this Chapter, mean Sunday, Good Friday, Christmas Day, New year's Day, the King's Birthday, or the day appointed to be kept in its place; a day appointed by proclamation as a public fast, thanksgiving day, or public holiday, the days after Christmas and New Year's Day when these days fall on Sunday. Any other day is a business day.

85. For the purposes of this Chapter, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding and the formal protest may be extended at any time thereafter, as of the date of the noting.

86. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place

where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form of protest given in the schedule to this Chapter may be used with necessary modifications, and if used, shall be sufficient.

87. The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Chapter, shall continue to apply to bills of exchange, promissory notes and cheques.

SCHEDULE.

FORM OF PROTEST WHICH MAY BE USED WHEN THE SERVICES OF A NOTARY CANNOT BE OBTAINED.

Know all men, that I, A. B., (householder), of, in, at the request of C. D., there being no Notary Public available, did, on the day of, 19.., at, demand payment (or acceptance) of the bill of exchange, hereunder written, from E. F., to which demand he made answer, (state answer, if any), wherefore, I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed),

A. B.

G. H.,

J. K.,

Witnesses.

N. B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

CHAPTER 186.

Of Bills of Lading.

SECTION

1.—Endorsee of bill to have rights of suit.
2.—Not to prejudice right of stoppage *in transitu*.

SECTION

3.—Bill of lading conclusive evidence against master. Proviso.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass upon, or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee, or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board of any vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and wholly by the fraud of the shipper or the holder, or some person under whom the holder claims.

CHAPTER 187.

Of the Liability of Carriers by Water.

SECTION
1.—Interpretation.SECTION
2.—Duties and liabilities of carriers by water.

1. In this Chapter, unless the context otherwise requires,—
- (1) The expression “goods” means and includes goods, wares, merchandize, and articles of any kind whatsoever;
 - (2) The expression “valuable securities” includes every document forming the title or evidence of the title to any property of any kind whatsoever.
- 2 (1) Carriers by water shall, at the times and in the manner and on the terms of which they have respectively given public notice, receive and convey, according to such notice, all persons applying for passage, and all goods offered for conveyance, unless in either case there is reasonable and sufficient cause for not doing so;
- (2) They shall be responsible not only for goods received on board their vessels, but also for goods delivered to them for conveyance by any such vessel, and they shall be bound to use due care and diligence in the safe keeping and punctual conveyance of such goods, subject to the provisions hereinafter made;
- (3) Carriers by water shall be liable for the loss of or damage to the personal baggage of passengers by their vessels; and the oath or affirmation of any such passenger shall be *prima facie* evidence of the loss of or damage to such articles and of their value: Provided that such liability shall not extend to any greater amount than two hundred dollars, or to the loss of or damage to any such valuable articles as are mentioned in subsection (c) following, unless the true nature and value of such articles so lost or damaged have been declared and entered, as provided by the said subsection (c).

- (4) They shall be liable for the loss of or damage to goods or personal baggage intrusted to them for conveyance as aforesaid, when caused by the fault or neglect of themselves, their agents, servants or employees:
- (5) Provided that they shall not be liable to any extent whatsoever to make good any loss or damage happening without their actual fault or privity, or the fault or neglect of their agents, servants or employees:
 - (a) To any goods or personal baggage on board any such vessel, or delivered to them for conveyance therein, by reason of fire or the dangers of navigation;
 - (b) Arising from any defect in or from the nature of the goods themselves, or from armed robbery, or other irresistible force;
 - (c) To any gold, silver, diamonds, watches, jewels or precious stones, money or valuable securities, or articles of great value not being ordinary merchandize, by reason of any robbery, theft, embezzlement, removal or secreting thereof, unless the true nature and value thereof has, at the time of delivery for conveyance, been declared by the owner or shipper thereof to the carrier, or his agent or servant, and entered in the bill of lading or otherwise in writing.

CHAPTER 188.

Of Weights and Measures and the Inspection of Lumber.

SECTION

- 1.—General standard of weights and measures.
- 2.—Appointment of Inspectors.
- 3.—Standard sets of weights and measures.
- 4.—Duty of Inspector to inspect and adjust at office.
- 5.—Power of Inspector to require production at office.
- 6.—Repairs and condemnation of defective weights and measures.
- 7.—(1), Power to enter and inspect and seize.
(2), Penalty for using defective weights, etc.
- 8.—Adjustment of standard sets.
- 9.—Inspectors not to be dealers in weights, etc.
- 10.—Disputes as to correctness of weights, etc.
- 11.—(1), Penalty for selling weights, etc., before inspection.
(2), Penalty for making or selling false weights, etc.
- 12.—Penalty for Inspector stamping weights, etc., without inspection.
- 13.—Damages to aggrieved purchaser.
- 14.—Right to procure inspection on payment of fees.
- 15.—Annual returns by Inspectors.
- 16.—Penalty for counterfeiting inspection marks or using condemned weights, etc.
- 17.—Steelyards,—when use permitted. Wood beams prohibited.
- 18.—Gauging rods.
- 19.—Penalty for using unstamped weights, etc.
- 20.—Vessels not used as measures.

SECTION

- 21.—Standard yard.
- 22.—Avoirdupois and troy weight.
- 23.—"Bushel" of certain articles.
"Barrel" of vegetables.
"Sack" of pease.
- 24.—Cattle and poultry feeds.
- 25.—Hay and straw.
- 26.—Imported fresh meat and baled hay.
- 27.—Salt.
- 28.—Coal.
- 29.—Bread.
- 30.—(1), Nett weight of certain foods.
(2), Special inspection of same.
- 31.—Purchaser may demand weighing in certain cases.
- 32.—(a), "Gallon" of paint, etc.
(b), Gauge of fish oils.
- 33.—Imported Wools and Yarns.
- 34.—"Hundredweight" of hardware.
- 35.—Nett weight to be marked on packages.
- 36.—Commencement of Chapter as to marking of nett weights.
- 37.—"Barrel" of herrings.
- 38.—Appointment of surveyors of lumber.
- 39.—Duties of surveyors of lumber.
- 40.—Shingles.
- 41.—Penalty on surveyors failing in duty.
- 42.—(1), "Cord" of wood.
(2), "Board measure" of log.
- 43.—(a), Compulsory survey of pit-props.
(b), Decision of surveyor on disputes as to lumber measurement.
- 44.—Fees of Inspectors and Surveyors.
- 45.—General penalty.
- 46.—Recovery of penalties.
- 47.—Short title.

1. All weights and measures used in this Colony shall, except as otherwise herein provided, be according to the standard established by the Act passed in the Parliament of Great Britain and Ireland in the fifth year of the reign of His Majesty George the Fourth, entitled "An Act for ascertaining and establishing the uniformity of Weights and Measures," and any Acts in amendment thereof.

2. The Governor in Council shall appoint a person to carry out the provisions hereof, who shall be called the Chief Inspector of Weights and Measures, and such other persons, who shall be called Inspectors of Weights and Measures, in such places as may be necessary, and the said Chief Inspector and each of such Inspectors shall be sworn before a Justice faithfully to discharge his duty whilst in office.

3. The Chief Inspector shall obtain a complete and proper set of

weights and measures, which have passed the Board of Trade in England, and such complete set of weights and measures shall be kept in his custody and shall constitute the standard by which all weights and measures shall be tried, proved and stamped, and the Chief Inspector shall cause duplicates to be made thereof and shall furnish each Inspector of Weights and Measures in any part of this Colony with a complete duplicate standard set of such weights and measures, and shall provide and keep one complete standard duplicate set for use by himself for the purposes of his work.

4. The Chief Inspector and Inspectors shall, when required, inspect and adjust all measures, weights and weighing machines brought to the office of any of them, according to the said standard, and they shall stamp or mark thereon the initials of the reigning Sovereign and their own proper initials.

5. The Chief Inspector and any other Inspector in any case in which he may deem it necessary by reason of locality or otherwise, may require any measure, weight, or weighing machine capable of being removed, to be brought by and at the expense of the owner, to the office of such Inspector for stamping or marking as aforesaid.

6. (1) Whenever any measure, weight, or weighing machine presented for inspection is palpably incorrect or requires repair or adjustment, the Chief Inspector or other Inspector shall efface the inspection mark therefrom, and the owner thereof shall, on demand of such Inspector, cause the same to be repaired or adjusted and thereafter to be presented for re-inspection.

(2) In addition to the fees payable for inspection as hereinafter provided, the said owner shall, for such re-inspection, be liable to pay one-half of the said fees.

(3) If any such measure, weight or weighing machine shall, in the opinion of the Inspector, be incapable of being properly repaired or adjusted, it shall be his duty to confiscate and destroy the same.

7. (1) It shall be lawful for the Chief Inspector or the Inspectors, in the day time, once in three months or oftener if it shall be necessary, and with or without constables, to visit any place of business and any vessel where any commodity is

sold or exchanged by weight or measure, and to inspect all measures, weights and weighing machines, and seize all such as are not marked as aforesaid, and any person refusing admission to an Inspector or obstructing an inspection shall forfeit a sum not exceeding forty dollars.

- (2) Every person who uses in trade, or has in his possession for use in trade, any measure, weight or weighing machine which is short of or exceeds the standard, and every person party to the use of such defective measure, weight or weighing machine, shall incur a penalty of not less than ten dollars nor more than twenty-five dollars, or, in the case of a second or subsequent offence, of not less than twenty-five dollars nor more than fifty dollars; and any contract, bargain, sale, or dealing made by the use of such defective measure, weight, or weighing machine, shall be void; and such defective measure, weight or weighing machine may be confiscated by the Inspector and disposed of in such manner as may be ordered by the Governor in Council.

8. Once at least in every five years each Inspector hereunder shall cause his duplicate standard set of weights and measures to be compared with the original standard set in the possession of the Chief Inspector, and shall have his said duplicate set, adjusted or renewed, if necessary.

9. No Inspector appointed hereunder shall be a maker or seller of weights, measures or weighing machines, but it shall be lawful for him to adjust or alter any weight verified by him or submitted to him for verification, and to collect therefor such charge as may be reasonable.

10. In case of disputes as to the correctness of a weight, measure, or weighing machine, the fees and expenses of the Inspectors, if requested to inspect such weight, measure or weighing machine, shall be paid by the person against whom the decision is given.

11. (1) No manufacturer of or dealer in weights or measures who has in his possession for sale any weight or measure shall be bound to have the same inspected and stamped hereunder, so long as the same remains in his manufactory, store or warehouse, but no such weight or measure shall be removed from his premises, sold or taken into use for trade without being inspected or stamped, and any such dealer or

manufacturer who permits any such weight or measure to be removed from his premises, sold or taken into use for trade without being inspected and stamped shall be liable to a penalty not exceeding fifty dollars: Provided that no weight or measure so inspected and stamped shall require any other inspection or stamping within twelve months.

- (2) Every person who wilfully makes or sells, or causes to be made or sold, any measure, weight or weighing machine which is short of or exceeds the standard, shall for the first offence incur a penalty of not less than twenty-five dollars, nor more than fifty dollars, and for the second and every subsequent offence a penalty of not less than fifty dollars nor more than one hundred dollars.

12. If any inspector stamps or marks any measure, weight or weighing machine without first having duly compared and verified the same with the standard or other authorized instrument in his possession for the purpose, he shall, on conviction, incur a penalty not exceeding twenty-five dollars for each offence.

13. Every person aggrieved by the use of any measure, weight or weighing machine which has not been duly inspected and stamped under the provisions hereof, or which is found light, deficient or otherwise unjust, may recover double damages and double costs.

14. The owner or user of a weighing machine may demand its inspection at any time by paying therefor the fees and costs incurred.

15. The Chief Inspector and Inspectors respectively shall, not later than the 15th day of January in each year, furnish to the Colonial Secretary a return for the year which ended on the 31st day of the previous month of December, showing the names and addresses of all persons whose measures, weights or weighing machines have been inspected during said year, with details of the different articles inspected for each person.

16. Any person who shall counterfeit the marking or stamping of the Inspector on any measure, weight or weighing machine, or shall use any such when condemned, shall forfeit and pay a penalty not exceeding forty dollars.

17. The use of steelyards, except for the weighing of hay or straw,

and the use of wooden beams for weighing, is hereby declared unlawful.

18. Gauging rods used in the gauging of oil, spirits and other liquids shall be of the same standard and size as the verification rods in the office of the Chief Inspector.

19. Any person who shall use in the sale or exchange of any commodity a measure, weight, or weighing machine not assayed and stamped or marked as aforesaid, or who shall use steelyards, except for the purpose of weighing hay or straw, or who shall use for weighing a beam made of wood, shall forfeit a sum not exceeding twenty dollars.

20. Nothing herein contained shall prevent the sale or subject a person to a penalty hereunder for the sale of an article in any vessel, such vessel being included in the sale, when such vessel is not represented as containing any specified quantity by measure, nor subject a person to a penalty hereunder for the possession of a vessel when it is shown that the vessel is not used or to be used as a measure.

21. The standard yard measure shall be thirty-six inches in length.

22. All articles sold by weight shall be sold by avoirdupois weight, except that gold and silver, platinum and precious stones and articles made thereof may be sold by the ounce troy, or by any decimal part of such ounce, and all contracts, bargains, sales and dealings in relation thereto shall be deemed to be made and had by such weight, and when so made or had shall be valid.

23. (1) In contracts for the sale and delivery of any of the under-mentioned articles, the bushel shall be determined by weighing, unless a bushel by measure is specially agreed upon; and the weight equivalent to a bushel shall be as follows:

Lime, eighty pounds;

Wheat, Pease, Beans, Potatoes and Clover Seed, sixty pounds;

Rye, Indian Corn and Flax Seed, fifty-six pounds;

Turnips, Carrots, Beet and Onions, fifty pounds;

Barley, Buckwheat and Timothy Seed, forty-eight pounds;

Hemp Seed, forty-four pounds;

Parsnips and Castor Beans, forty pounds;

Malt, thirty-six pounds;
Oats, thirty-four pounds;
Blue Grass Seed, fourteen pounds.

- (2) All grain and seed hereinbefore mentioned shall be of dry, sound quality, and all potatoes and other vegetables hereinbefore mentioned shall be in good sound condition.
- (3) Whenever potatoes or other vegetables hereinbefore mentioned shall be sold by the barrel, every such barrel shall contain at least three bushels of the weight aforesaid, and where the same or any of them shall be sold by the barrel, sack or case, the net weight shall be legibly marked thereon.
- (4) Sacks of pease, round or split, shall weigh ninety-eight pounds net.

24. Cattle feeds and poultry feeds shall be sold by weight, and the net weight of each package thereof shall be marked thereon. The net standard weight of corn, bran, cornmeal, gluten meal, cracked corn, hominy feed, feed flour, molascuit feed, molassine feed, linseed oil meal, ground oil cake, middlings, and all feeds not herein enumerated, shall be one hundred pounds per sack.

25. Hay and straw shall be sold by weight, and each ton shall contain two thousand pounds, and each hundred weight one hundred pounds.

26. All fresh meats imported for sale, and all hay imported for sale, in screwed or pressed packages shall be weighed by the vendor, who shall attach to each piece of meat and package of hay a ticket marked with the weight thereof, and such meats and packages purchased shall be re-weighed by the vendor, in the presence of the purchaser, if desired, at the time of the delivery, under a penalty of not exceeding ten dollars for each refusal so to do.

27. Salt may be sold by measure or by weight; if sold by weight each ton shall contain two thousand two hundred and forty pounds and if sold by measure there shall be eighteen gallons to a tub and three tubs to a hogshead. Any person who shall sell or dispose of salt by measure otherwise than according to the standard hereby established shall forfeit a sum not exceeding twenty dollars.

28. Coal may be sold by measure or by weight; if sold by weight each ton shall contain two thousand two hundred and forty pounds; if

sold by measure there shall be two hundred and twenty-four pounds to the tub, and one hundred and twelve pounds to the half tub, both measures to be of dry coal, struck or water measure; and any person who shall sell or dispose of coal by measure otherwise than in accordance with the standard hereby established shall forfeit a sum not exceeding twenty dollars; provided that this section shall not apply to the sale of a cargo of coal, when the same may be sold wholesale by the chaldron.

29. Loaves of bread intended for sale shall be made of the following weights, namely: Four pounds, two pounds, one pound, and eight ounces, and shall have stamped or marked thereon the initials of the maker and the weight of the loaf, and the vendor of bread shall keep a scale and weights, and shall, if required, weigh the bread for the satisfaction of the purchaser; and bread offered for sale of short weight shall be forfeited and may be seized by the purchaser or intending purchaser, or any Peace officer, and delivered to any Justice, who shall dispose of the same for the benefit of the poor; provided that this section shall not apply to loaves made to order and rasped by the desire of the customer, nor to loaves or cakes weighing less than eight ounces. Prosecutions for breach of this section shall be commenced within three days after the offence shall have been committed.

30. (1) The following shall be the standard net weight of articles of provisions, whether imported into or produced or manufactured in this Colony, and offered for sale, namely:

Biscuit, the bag, one hundred and twelve pounds; the half bag, fifty-six pounds.

Flour and Oatmeal, the barrel, one hundred and ninety-six pounds; the half barrel, ninety-eight pounds.

Rolled Oats, the barrel, one hundred and eighty pounds; the half barrel, ninety pounds.

Pork, Beef and Jowls, the barrel, two hundred pounds; the half barrel, one hundred pounds.

Barrels of Pork, Beef and Jowls shall have the net weight of the contents marked thereon.

(2) (a) Any person who has imported or purchased in the original package any of the articles enumerated in the preceding sub-section, may have such package inspected by the nearest

Inspector appointed under this Chapter, upon payment to such Inspector of a fee of one dollar, together with a reasonable sum for travelling expenses.

- (b) Such package shall be exhibited to such Inspector, who shall satisfy himself that the same is intact, and the same shall then be opened in his presence, and the contents thereof weighed by him with duly inspected appliances provided by the person requiring such inspection.
- (c) Such Inspector shall thereupon give to such person a certificate in writing under his hand, in a form to be prescribed by the Governor in Council, of the facts of such inspection, and of the net weight of the contents of such package, which certificate shall be conclusive proof in any Court of Justice of this Colony of the facts therein stated.
- (d) An additional fee of twenty-five cents shall be paid to such Inspector for each additional package beyond the first which he is required to inspect as aforesaid at one and the same visit.
- (e) If any such Inspector shall be required to travel to a place at a distance of more than three miles for the purpose of making any inspection under this section, he shall be entitled to be paid, in addition to the minimum fee of one dollar hereinbefore prescribed, a fee of twenty-five cents for each mile or part of a mile in excess of the first three miles so travelled; provided that the payment of such extra fee shall entitle the person paying the same to have an inspection made of the number of packages in respect of which such fee would be payable under the provisions of sub-section (d) hereof.

31. Purchasers of the articles enumerated in the foregoing section may demand that the same be weighed by the vendor, and if any be found of less than the standard net weight there shall be a proportionate deduction made by the vendor in the price agreed upon; and purchasers of butter, imported into or made in this Colony, may demand that the same be weighed at the time of purchase by the vendor, who shall make a fair allowance for the weight of packages; and if any vendor shall refuse to weigh any of the said articles when required, or to make a reduction in the price where there ought to be a reduction in accordance with the provisions of this section, he shall be liable to a penalty not exceeding twenty dollars.

- 32.** (1) The standard measure of paints, oils, varnishes and turpentine shall be the Imperial gallon, and it shall be a breach of this Chapter to use the term "gallon" in the sale of any such articles except as meaning an Imperial gallon.
- (2) When fish oils are sold in kerosene oil casks, linseed oil casks, or casks such as are used in the butterine factories in St. John's, the gross cubical contents of such casks as determined by gauge shall be subject to an addition of one and one-half gallons by way of allowance for the difference between the actual cubical contents of such cask and the apparent cubical contents as determined by gauge.
- 33.** Imported wools and yarns shall be sold only in packages containing manufacturers' standard weights, which shall be marked on the package.
- 34.** The term "hundredweight" as applied to articles of hardware sold by weight shall be held to mean one hundred pounds.
- 35.** All packages such as cartons, kegs, boxes, crocks, tins, bags, and bottles, containing articles exposed for sale in such packages in quantities of two ounces by weight or measure and upwards shall have the net weight or measure marked thereon.
- 36.** The provisions of this Chapter whereby the vendors of goods are required to have the net weight of the contents of packages marked thereon shall come into force on the first day of January, nineteen hundred and seventeen.
- 37.** When fresh herrings are bought or sold by the barrel every such barrel shall be capable of containing thirty-two gallons water or struck measure; and every barrel, used as a measure, shall be inspected and stamped by an Inspector of weights and measures.
- 38.** The Governor in Council shall appoint persons to be surveyors of lumber, who shall, previously to their entering upon the duties of their office, give security to His Majesty, and shall be sworn before a Justice faithfully to discharge the duties of such office.
- 39.** The duties of such surveyors of lumber shall be to survey and measure, upon request made by the vendor or purchaser thereof, all timber, pit props, plank and lumber, imported into or the produce of this

Colony which may be offered for sale, and to mark upon each piece of timber, plank and lumber the quantity therein, and also the grade or quality thereof, using the figures I., II. and III., and the letter R., to indicate first, second and third grade and refuse respectively; and also upon the like request to survey all shingles made in or imported into this Colony and offered for sale, and to mark each bundle of shingles which shall not be of standard size with the letter R., for refuse.

40. The standard size of each shingle shall be sixteen inches long, and of each bundle of shingles shall be twenty inches wide and twenty-five tiers high, well and closely packed; and if any shingles shall be falsely or fraudulently packed they shall be forfeited, and all shingles marked with the letter R. by the surveyor of lumber shall be sold as refuse.

41. If a surveyor of lumber shall, after having received twelve hours' notice from the purchaser or vendor requiring such surveyor to survey or measure any timber, pit props, plank, lumber or shingles, refuse or neglect so to do, (unless unavoidably prevented by sickness or by being employed in the survey of timber, pit props, plank, lumber or shingles elsewhere), he shall be liable to a penalty not exceeding twenty-five dollars; and if any surveyor of lumber shall be unfaithful or negligent in the discharge of his duty he shall be liable to a penalty not exceeding one hundred dollars, and shall be incapable of acting as a surveyor of lumber thereafter; and if any person shall act as a surveyor of lumber except he be appointed in manner aforesaid he shall be liable to a penalty not exceeding forty dollars for each offence.

42. (1) Where lumber is sold by the cord, as in the case of pit props, a cord shall mean the quantity of round timber that can be properly piled within a space of one hundred and twenty-eight cubic feet, without deduction for air spaces between the logs.

(2) The board measure of a log shall be determined by multiplying the diameter of the log at the top by one-half the said diameter in inches, and multiplying the product by the length of the log in feet, and dividing the resulting product by twelve. The result shall be the board measurement of the log in feet.

43. (1) Whenever the actual cutter of pit-props shall sell the same by measurement, he shall, before delivering any such pit-props, cause the same to be surveyed by a duly appoint-

ed surveyor of lumber, under a penalty not exceeding twenty-five dollars for each offence.

- (2) Whenever any timber other than pit-props, or any plank, lumber or shingles, are being sold by measurement, and a dispute arises between the vendor and the purchaser as to the correctness of such measurement, either party may cause the said timber, plank, lumber or shingles, to be surveyed by a duly appointed surveyor of lumber, whose certificate as to the measurement thereof shall be final and binding on both parties.

44. Inspectors of Weights and Measures appointed under this Chapter shall, in the absence of any agreement to the contrary, be entitled, in addition to any salaries paid them by the Government, to receive from the owners of weights and measures the following fees for all weights and measures assayed and marked as aforesaid, namely:—

COUNTER SCALES AND BEAMS.

To weigh 5lbs. and under	\$ 0 20
“ over 5lbs. and not exceeding 50lbs.	0 30
“ over 50lbs. and not exceeding 100lbs.	0 50
“ over 100lbs. and not exceeding 500lbs.	0 75
“ over 500lbs.	1 00
Every beam	0 30

WEIGHBRIDGES AND ALL PLATFORM SCALES.

To weigh 250lbs. and under	\$ 0 50
“ over 250lbs. and not exceeding 500lbs.	0 75
“ over 500lbs. and not exceeding 2,000lbs.	1 00
“ over 2,000lbs. and not exceeding 4,000 lbs.	1 50
“ over 4,000lbs. and not exceeding 6,000lbs.	2 00
For each additional 2,000lbs. up to 20,000lbs.	0 50
For each additional 2,000lbs. over 20,000lbs.	0 25

COMPUTING AND DIAL BALANCES.

To weigh 30lbs. or under	\$0 50
“ over 30lbs. and not exceeding 50lbs.	0 75
“ over 50lbs. and not exceeding 100lbs.	1 00
“ over 100lbs.	1 50
Vertical Spring Balances of the Salter or other make approved by the Chief Inspector	0 20

MEASURES OF CAPACITY.

2 Hogsheads	\$1 00
1 Hogshead	0 75
18 Gallon (or tub)	0 50
Coal Tub	0 50
Coal 1/2 Tub	0 30
Bushel	0 30
4 and 3 Gallon	0 30
Gallon	0 10
Half-gallon and every smaller measure	0 05

LINEAL MEASURES.

10 feet	\$0 20
6 feet	0 15
5 feet	0 15
3 feet or yard	0 05
Chain or Ribband (100 feet)	0 75
“ “ (50 feet)	0 50
“ “ (66 feet)	0 50
“ “ (33 feet)	0 25

WEIGHTS.

56 lbs.	\$0 15
28 lbs.	0 10
14 lbs.	0 10
7 lbs. and every smaller weight	0 05

Provided that such fees shall be demanded and payable only once in each year.

Surveyors of lumber appointed as aforesaid shall, in the absence of any agreement to the contrary, be entitled to receive from the vendors or importers of all timber, pit-props, plank, lumber and shingles, surveyed and measured or marked as aforesaid, the following fees, namely:

For every ton of timber, twenty-five cents.

For every cord of wood, five cents.

For every thousand superficial feet of plank, board or lumber, thirty-eight cents.

And for every thousand shingles, five cents.

45. Any person offending against any of the provisions of this

Chapter where no specific penalty is prescribed, shall for each offence be liable to a penalty not exceeding twenty dollars, and in all cases in default of payment, where no imprisonment is mentioned, may be imprisoned for a period not exceeding fourteen days.

46. All penalties and forfeitures under this Chapter may be recovered, together with costs, in a summary way before a Justice; and where not otherwise herein provided, one-half of such penalties and forfeitures shall be paid to the party prosecuting the offender to conviction, and the other half shall be paid to the Minister of Finance and Customs for the use of the Colony.

47. This Chapter may be cited as "the Weights and Measures Act."

CHAPTER 189.

Of the Recovery and Rate of Interest.

SECTION

1.—Interest at six per cent. may be charged
on sums or debts due under written
contracts.

SECTION

2.—Interest from insolvent estates.

1. Upon all debts or sums certain, payable at a certain time or otherwise the jury on the trial of any issue or on any inquisition of damages may allow interest to the creditor at a rate not exceeding six dollars for the forbearance of one hundred dollars for a year, and so after that rate for a greater or less sum or for a longer or shorter time from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument, at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment: Provided that interest at the rate of six dollars per centum per annum as aforesaid shall be payable in all cases arising in this Colony in which interest is now payable in law.

2. No claim for interest, exceeding six dollars per centum per annum, shall be recoverable against any insolvent estate in this Colony.

CHAPTER 190.

Of Partnership.

SECTION

- 1.—Definition of partnership.
- 2.—Rules for determining existence of partnership.
- 3.—Postponement of rights of person lending or selling in consideration of share of profits in case of insolvency.
- 4.—Meaning of firm.
- 5.—Power of partner to bind the firm.
- 6.—Partners bound by acts on behalf of firm.
- 7.—Partner using credit of firm for private purposes.
- 8.—Effect of notice that firm will not be bound by acts of partner.
- 9.—Liability of partners.
- 10.—Liability of the firm for wrongs.
- 11.—Misapplication of money or property received for or in custody of the firm.
- 12.—Liability for wrongs, joint and several.
- 13.—Improper employment of trust property for partnership purposes.
- 14.—Persons liable by "holding out."
- 15.—Admission and representation of partners.
- 16.—Notice to acting partner to be notice to firm.
- 17.—Liabilities of incoming and outgoing partners.
- 18.—Revocation of continuing guaranty by change in firm.
- 19.—Variation by consent of terms of partnership.
- 20.—Partnership property.
- 21.—Property bought with partnership money.
- 22.—Procedure against partnership property for partner's separate judgment debt.
- 23.—Rules as to interests and duties of partner's subject to special agreement.
- 24.—Expulsion of partner.

SECTION

- 25.—Retirement from partnership at will.
- 26.—Where partnership for term is continued over, continuance on old terms presumed.
- 27.—Duty of partners to render accounts, &c.
- 28.—Accountability of partners for private profits.
- 29.—Duty of partner not to compete with firm.
- 30.—Rights of assignee of share in partnership.
- 31.—Dissolution by expiration or notice.
- 32.—Dissolution by insolvency, death or change.
- 33.—Dissolution by illegality of partnership.
- 34.—Dissolution by the Court.
- 35.—Rights of persons dealing with firm against apparent members of firm.
- 36.—Right of partners to notify dissolution.
- 37.—Continuing authority of partners for purposes of winding up.
- 38.—Rights of partners as to application of partnership property.
- 39.—Apportionment of premium where partnership prematurely dissolved.
- 40.—Rights where partnership dissolved for fraud or misrepresentation.
- 41.—Right of outgoing partner in certain cases to share profits made after dissolution.
- 42.—Retiring or deceased partner's share to be a debt.
- 43.—Rule for distribution of assets on final settlement of accounts.
- 44.—Definition of "court" and "business."
- 45.—Savings for rules of equity and common law.
- 46.—Short title.

NATURE OF PARTNERSHIP.

1. (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
- (2) But the relation between members of any company or association which is
 - (a) Registered as a company under Chapter 127 of these Consolidated Statutes, entitled "Of Companies," or any other Act of the Legislature for the time being in force and relating to the registration of joint stock companies; or
 - (b) Formed or incorporated by or in pursuance of any other Act of the Legislature or letters patent, or royal charter; is not a partnership within the meaning of this Chapter.

2. In determining whether a partnership does or does not exist, regard shall be had to the following rules:

- (1) Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership, as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
- (2) The sharing of gross returns does not of itself create a partnership whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
- (3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular:
 - (a) The receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such;
 - (b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such;
 - (c) A person being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner is not by reason only of such receipt a partner in the business or liable as such;
 - (d) The advance of money by way of loan to a person engaged, or about to engage, in any business, on a contract with that person that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the business does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided the con-

tract is in writing and signed by or on behalf of all the parties thereto:

- (e) A person receiving by way of annuity or otherwise, a portion of the profits of a business in consideration of the sale by him of the good-will of the business is not by reason only of such receipt a partner in the business or liable as such.

3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a good-will in consideration of a share of the profits of the business, being declared insolvent, entering into an arrangement to pay his creditors less than one hundred cents in the dollar, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the good-will shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied.

4. Persons who have entered into partnership with one another are for the purpose of this Chapter called collectively a firm, and the name under which their business is carried on is called the firm-name.

RELATIONS OF PARTNERS WITH PERSONS DEALING WITH THEM.

5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing, either knows that he has no authority, or does not know or believe him to be a partner.

6. An act or instrument relating to the business of the firm and done or executed in the firm-name, or in any other manner showing an intention to bind the firm, by any person thereto authorized, whether a partner or not, is binding on the firm and all the partners. Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments.

7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the

firm is not bound unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner.

8. If it has been agreed between the partners that any restriction shall be placed on the power of any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect of persons having notice of the agreement.

9. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied but subject to the prior payment of his separate debts.

10. Where, by any wrongful act or omission of any partner, acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act.

11. In the following cases; namely,—

- (1) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and
- (2) Where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm;

the firm is liable to make good the loss.

12. Every partner is liable jointly with his co-partners and also severally for every thing for which the firm, while he is a partner therein, becomes liable under either of the two last preceding sections.

13. If a partner, being a trustee, improperly employs trust property in the business or on the account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein: Provided as follows:—

- (1) This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and

- (2) Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

14. (1) Everyone who by words spoken or written, or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made.

- (2) Provided that where, after a partner's death, the partnership business is continued in the old firm-name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executor's or administrator's estate or effects liable for any partnership debts contracted after his death.

15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm.

16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

- 17.** (1) A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.

- (2) A partner who retires from a firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted.

18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect to the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which the guaranty or obligation was given.

RELATIONS OF PARTNERS TO ONE ANOTHER.

19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Chapter, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing.

20. (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise on account of the firm, or for the purposes and in the course of the partnership business, are called in this Chapter partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

(2) Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law thereto applicable but in trust so far as necessary for the persons beneficially interested in the land under this section.

(3) Where co-owners of an estate or interest in any land not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belong to them, in the absence of agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of purchase.

21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm.

22. (1) A writ of execution shall not issue against any partnership property except on a judgment against the firm.

- (2) The Supreme Court or a Judge thereof may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profit with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct all accounts and enquiries and give all other orders and directions which might have been directed or given if the charge had been made in favor of the judgment creditor by the partner, or which the circumstances of the case may require.
- (3) The other partner or partners shall be at liberty at any time to redeem the interest charged, or in case of a sale being directed, to purchase the same.

23. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement express or implied between the partners, by the following rules:

- (1) All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm.
- (2) The firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—
- (a) In the ordinary and proper conduct of the business of the firm; or
- (b) In or about anything necessarily done for the preservation of the business or property of the firm.
- (3) A partner making for the purpose of the partnership any actual payment or advance beyond the amount of capital which he agreed to subscribe, is entitled to interest at the rate of six per cent. per annum from the date of the payment or advance.
- (4) A partner is not entitled before the ascertainment of profits, to interest on the capital subscribed by him.

- (5) Every partner may take part in the management of the partnership business.
- (6) No partner shall be entitled to remuneration for acting in the partnership business.
- (7) No person may be introduced as a partner without the consent of all existing partners.
- (8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners.
- (9) The partnership books are to be kept at the place of business of the partnership (or at the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them.

24. No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners.

25. (1) Where no fixed time has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time, on giving notice of his intention so to do to all the other partners.

(2) Where the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, shall be sufficient for this purpose.

26. (1) Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will.

(2) A continuance of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership.

27. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

28. (1) Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership or from any use by him of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner.

29. If a partner without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business.

30. (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership, business or affairs, or to require any accounts of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners.

(2) In case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

DISSOLUTION OF PARTNERSHIP AND ITS CONSEQUENCES.

31. Subject to any agreement between the partners, a partnership is dissolved,—

- (1) If entered into for a fixed term by the expiration of that term;
- (2) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking;
- (3) If entered into for an undefined time, by any partner giving notice to the other, or others, of his intention to dissolve the partnership.

In the last mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned as from the date of the communication of the notice.

32. (1) Subject to any agreement between the partners every partnership is dissolved as regards all the partners, by the death or insolvency of any partner.

- (2) A partnership may, at the option of the other partners be dissolved, if any partner suffers his share of the partnership property to be charged under this Chapter for his separate debt.

33. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership.

34. On application by a partner, the Court may decree a dissolution of the partnership in any of the following cases:—

- (1) When a partner is found lunatic by inquisition or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene, as by any other partner;
- (2) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract;
- (3) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on of the business;

- (4) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him;
- (5) When the business of the partnership can only be carried on at a loss;
- (6) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved.

35. (1) Where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm, until he has notice of the change.

(2) An advertisement in the *Royal Gazette* and one other newspaper published in this Colony, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised.

(3) The estate of a partner who dies, or who becomes insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement, respectively.

36. On the dissolution of a partnership, or retirement of a partner, any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary or proper acts, if any, which cannot be done without his or their concurrence.

37. After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. Provided that the firm is in no case bound by the acts of a partner who has become insolvent; but this proviso does not affect the liability of any person who has after the insolvency represented himself, or knowingly, suffered himself to be represented as a partner of the insolvent.

38. On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnerships applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners, respectively, after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm.

39. Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued; unless

- (1) The dissolution is in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or
- (2) The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium.

40. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled

- (1) To a lien on or right of retention of the surplus of the partnership liabilities for any sum of money paid by him for the purchase of a share in the partnership, and for any capital contributed by him, and is
- (2) To stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities, and
- (3) To be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

41. (1) Where any member of a firm has died or otherwise ceased

to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital and assets, without any final settlement of accounts as between the firm and the outgoing partner or his estate, then in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or interest at the rate of six per cent. per annum on the amount of his share of the partnership assets.

- (2) Provided that where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

42. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death.

43. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed:

- (1) Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits.
- (2) The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital shall be applied in the following manner and order:
- (a) In paying debts and liabilities of the firm to persons who are not partners therein.

- (b) In paying to each partner rateably what is due from the firm to him for advances as distinguished from capital.
- (c) In paying to each partner rateably what is due from the firm to him in respect of capital.
- (d) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

SUPPLEMENTAL.

44. In this Chapter, unless the contrary intention appears, the expression "Court" includes every Court and Judge having jurisdiction in the case; the expression "business" includes every trade, occupation or profession.

45. The rules of equity and common law applicable to partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Chapter.

46. This Chapter may be cited as "The Partnership Act."

CHAPTER 191.

Of Limited Partnership.

SECTION

- 1.—Purposes of limited partnership.
- 2.—Partnership to consist of general and special partners; their liabilities.
- 3.—General partners to transact business.
- 4.—Certificate to be signed by all the partners.
- 5.—Certificate, before whom and how acknowledged.
- 6.—In what places to be filed and recorded.
- 7.—Affidavit also to be filed.
- 8.—Partnership, when deemed formed; effects of false certificate.
- 9.—Terms of partnership; how published; effect of omission.
- 10.—Affidavit of publication; where to be filed; effect as evidence.
- 11.—Renewals, &c., of partnership; how to be made.
- 12.—Alterations deemed dissolution.

SECTION

- 13.—In what form and name business to be carried on.
- 14.—Suits to be in names of general partners.
- 15.—Special partner not to withdraw his capital.
- 16.—When to refund interest paid by him.
- 17.—Rights of special partners and restriction on them.
- 18.—Liability of general partners to account.
- 19.—Liability and punishment of parties guilty of fraud.
- 20.—Assignment of certain creditors void.
- 21.—Certain assignments void.
- 22.—Certain acts of special partner to render him liable.
- 23.—Special partners not to claim as creditors in case of insolvency of firm.
- 24.—Dissolution by acts of partner. Schedule.

1. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business within this Colony may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed; but the provisions of this Chapter shall not be construed to authorize any such partnership for the purpose of transacting the business of banking or making insurance.

2. Such partnerships may consist of one or more persons who shall be called general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments, or in property at its actual cash value, a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital.

3. The general partners only shall be authorized to transact business and sign for the partnership, and to bind the same.

4. The persons desirous of forming such partnership shall make and severally sign a certificate, similar in effect to form No. 1 in the schedule hereunto annexed, and which certificate shall contain:—

- (1) The name or firm under which such partnership is to be conducted.

- (2) The general nature of the business intended to be transacted.
- (3) The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
- (4) The amount of capital which each special partner shall have contributed to the common stock.
- (5) The period at which the partnership is to commence, and the period at which it will terminate.

5. The certificate shall be acknowledged by the several persons signing the same before a notary public, who shall certify such acknowledgment, whether made abroad or in this Colony, under his seal of office, to the effect of form No. 2 in the schedule to this Chapter annexed.

6. The certificates so acknowledged and certified shall be filed in the office of the Colonial Secretary, and shall be recorded in the same office at large, in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situate in different districts a transcript of the certificate and of the acknowledgment thereof, duly certified by the Colonial Secretary under his official seal, shall be filed and recorded in like manner in the office of the registrar of deeds for such district.

7. At the time of filing the original certificate, with the evidence of the acknowledgment thereof as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners to the common stock have been actually and in good faith paid; and which affidavit shall be similar in effect to form No. 3 in the annexed schedule.

8. No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners.

9. The partnership shall publish the terms of the partnership, when registered, for at least six weeks immediately after such registry in the *Royal Gazette* and in one or two other newspapers to be designated by the

Colonial Secretary, and to be published in this Colony; and if such publication be not made, the partnership shall be general; and such advertisement shall be similar in effect to form No. 1 in the said annexed schedule.

10. Affidavits of the publication of such notice by the printers of the newspapers in which the same shall be published shall be filed in the office of the Colonial Secretary, and shall be evidence of the facts therein contained, and which affidavits shall be similar in effect to form No. 5 in the said annexed schedule.

11. Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice be given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership.

12. Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership, unless such alteration shall have been made according to the provisions of the twenty-fourth section of this chapter; and any such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last preceding section.

13. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner shall be used in such firm, with his privity, he shall be deemed a general partner.

14. Suits in relation to the business of the partnership may be brought and conducted by and against the general partners in the same manner as if there were no special partners.

15. No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the shape of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if,

after the payment of such interest, any profits shall remain to be divided, he may also receive his portion of such profits.

16. If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of capital with interest.

17. A special partner may, from time to time, examine into the state and progress of the partnership concerns, and may advise as to their management, and any remuneration of special partners or any other persons acting as servants or agents for any such partnership by a share of the profits or otherwise shall not render them liable as general partners; but he shall not contract any business on account of the partnership, nor be employed for that purpose as agent, attorney or otherwise. If he shall interfere contrary to these provisions he shall be deemed a general partner.

18. The general partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and equity, as other partners are now by law.

19. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage; and shall also be liable to an indictment for a misdemeanor, punishable on conviction by fine or imprisonment or both, in the discretion of the Court by which he shall be tried.

20. Every sale, assignment or transfer of any of the property or effects of such partnership made by such partnership when actually insolvent or in contemplation of insolvency, or after or in contemplation of a declaration of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership or insolvent partner over other creditors of such partnership; and every judgment confessed, lien created, or security given by such partnership, under the like circumstances and with the like intent, shall be void as against the creditors of such partnership.

21. Every such sale, assignment or transfer of any of the property or effects of a general partner, made by such general or special partner when actually insolvent, or in contemplation of a declaration of insolvency, or after or in contemplation of a declaration of insolvency of the partnership, with the intent of giving to any creditor of his own or of the

partnership a preference over other creditors of the partnership, and every judgment confessed, lien created, or security given by any such partner, under the like circumstances and with the like intent, shall be void as against the creditors of the partnership.

22. Every special partner who shall violate any of the provisions of the two last preceding sections, or who shall concur in or assent to any such violation by the partnership or by any individual partner, shall be liable as a general partner.

23. In case of the insolvency or bankruptcy of the partnership no special partner shall under any circumstances be allowed to claim as a creditor until the claims of all the other creditors of the partnership shall be satisfied.

24. No dissolution of such partnership by the acts of the parties shall take place previous to the time specified in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded in the Colonial Secretary's office, in which the original certificate was recorded, and published once in each week, for four weeks, in the *Royal Gazette*, and any other local newspaper published in this Colony.

SCHEDULE OF FORMS.

No 1.—CERTIFICATE OF FORMATION OF LIMITED PARTNERSHIP.

This is to certify that we, whose names are undersigned, are desirous of forming a limited partnership, and

1st. That the name or firm under which such partnership is to be conducted is: (here insert the name or firm, as "George Thompson," or "Thompson & Black," as the case may be).

2nd. That the general nature of the business intended to be transacted by such partnership is: (here insert the general nature of the business, as the buying and selling at wholesale and retail, of tobacco, snuffs and cigars, and such other articles as are usually bought and sold by persons trading as tobacconists or dealers in tobacco.)

3rd. That the names of all the general and special partners interested in the said co-partnership are as follows: (here insert the names and places of residence of each partner, and specify which are general and which are special partners, as thus: George Thompson, James Black, Henry Lloyd and Alfred Smee; that the said George Thompson is a general partner, and his place of residence is in; that the said

James Black is a general partner, and his place of residence is also in; that the said Henry Lloyd is a special partner, and his place of residence is in; and that the said Alfred Smee is a special partner, and his place of residence is in; (as the case may be.)

4th. That the amount of capital which each of the said special partners has contributed to the common stock of the said partnership is as follows: (here insert as thus, or as the case may be,—The said Henry Lloyd the sum of, and the said Alfred Smee the sum of).

5th. That the period at which the said partnership is to commence is the day of 19... (insert the date, which should be after the certificate is filed and recorded); and the period at which the said partnership is to terminate is the day of 19... (insert the date).

As witness our hands, on this day of 19.....

(Signed), GEORGE THOMPSON,
JAMES BLACK,
HENRY LLOYD,
ALFRED SMEE.

NO 2.—NOTARIAL CERTIFICATE.

On this day of 19..., before me, A. B., of St. John's, (or as the case may be) Notary Public, duly admitted and sworn and practising in St. John's (or as the case may be) aforesaid, personally came the above named George Thompson, James Black, Henry Lloyd and Alfred Smee, to me known to be the persons described in and who signed the above certificate, and who severally acknowledged to me that they severally signed the said certificate.

.. NO 3.—AFFIDAVIT TO BE FILED WITH CERTIFICATE.

George Thompson of this city maketh oath and saith:

That he is one of the general partners named in the above written (or annexed) certificate, and that the said amounts specified in the said certificate to have been contributed by each of the special partners, in the said certificate named, to the common stock of the said partnership, in the said certificate also named, have been actually and in good faith paid in

cash (or in property at its actual cash value, specifying the general description of the property, as the case may be).

Sworn, &c.

(Signed), GEORGE THOMPSON.

NO 4.—ADVERTISEMENT OF TERMS OF PARTNERSHIP.

Similar in effect to form No. 1.

NO 5.—AFFIDAVIT OF PUBLICATION BY PRINTER OF NEWSPAPER.

A. B., of, maketh oath and saith that he is printer of the newspaper known as the (insert name of paper) published daily or weekly at (insert name of publication of newspaper) and that the advertisement, copy whereof is hereto annexed, was published in said newspaper for six weeks successively, that is to say, in the issues of said newspaper dated respectively the day of, the day of, the of, and the day of (insert dates when advertisement appeared).

Sworn, &c.

(Signed), A. B.

CHAPTER 192.

Of the Compromise of Partners and Joint Debtors.

SECTION

- 1.—Compromises of one or more partners of firms with creditors.
- 2.—Memorandum of release or compromise.
- 3.—Responsibility and right of the other co-partners.

SECTION

- 4.—Liability of party compromising to contribute.
- 5.—Preceding provisions extended to joint debtors.

1. Whenever any co-partnership firm shall be dissolved by mutual consent or otherwise, any one or more of the individuals who was or were embraced in such co-partnership firm may make a separate composition or compromise with any one or all of the creditors of such co-partnership firm; and such composition or compromise shall be a full and effectual discharge to the debtor or debtors making the same, and to them only, of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connection with such co-partnership firm.

2. Every such debtor or debtors making such composition or compromise shall take from the creditor or creditors with whom he may make the same a note or memorandum in writing, exonerating him or them from all and every individual liability incurred by reason of such connection with such co-partnership firm, which note or memorandum may be given in evidence by such debtor or debtors in bar of such creditors' right of recovery against him or them; and if such liability shall be by judgment in any Court of record in this Colony, then on a production to and filing with the clerk thereof the said note or memorandum in writing, duly acknowledged by the party or parties making the same, in the same manner as satisfaction of judgment is now required by law to be acknowledged, such clerk shall discharge said judgment of record so far as the said compromising debtor or debtors shall be concerned.

3. Such compromise or composition with an individual member of a firm shall not discharge the other co-partners, nor shall it impair the rights of the creditor to proceed at law or in equity against the members of such co-partnership firm as have not been discharged. The member or members of such co-partnership firm so proceeded against shall be permitted to set off any demand against the said creditor or creditors which could

have been set off had such suit been brought against all the individuals composing such firm; nor shall such compromise or discharge of an individual of a firm prevent the other members of such firm from availing themselves of any defence at law or equity that would have been available had not this Chapter been passed, except that they shall not set up the discharge of one individual as a discharge of the other co-partners, unless it shall appear that all were intended to be discharged.

4. Such compromise or composition of an individual of a firm with a creditor of such firm shall in nowise affect the rights of the other co-partners to call on the individual making such compromise for his rateable proportion of such co-partnership debt, the same as if this Chapter had not passed.

5. The above provisions in reference to co-partners of a firm shall extend to joint debtors, who may individually compound or compromise for their joint indebtedness, with the like effect in reference to creditors and to joint debtors of the individuals so compromising as is above provided in reference to co-partners.

CHAPTER 193.

Of Life and Accident Insurance.

SECTION

- 1.—Short title.
- 2.—Interpretation section.
- 3.—Application of Chapter.
- 4.—Construction of contracts and proceedings to enforce same.
- 5.—Meaning of accident, disability or casualty.
- 6.—All conditions of contract to appear on instrument, and statements to affect policy must be material.
- 7.—Respecting the allowance of thirty days for payment of premium.
- 8.—Respecting errors as to age or otherwise.
- 9.—Respecting payment of claims.
- 10.—Respecting the name of beneficiaries and diverting benefits.
- 11.—Burden of proof as to amount of claim payable is on insurer.

SECTION

- 12.—Mode and time of payment of claims.
- 13.—Respecting appointment of trustees of policy.
- 14.—Respecting payment to representative appointed by foreign jurisdiction.
- 15.—Respecting payment into Court of shares of infants.
- 16.—Respecting surrender of policy in favor of preferred beneficiaries.
- 17.—A trust in favor of certain beneficiaries may be created in certain cases, and shares may be apportioned by insured.
- 18.—Such trust or appointment may be varied.
- 19.—Respecting payment and application of bonuses and profits by direction of insurer and the surrender and assignment of policies.

1. This Chapter may be cited as “The Insurance Act.”

2. In this Chapter, unless the context otherwise requires—

- (1) “Chief Agency” means the principal office or place of business in Newfoundland of an extra-Colonial Corporation undertaking insurance in Newfoundland.
- (2) “Collector” includes every officer, agent or person receiving pay, however remunerated, who by himself or by any deputy or substitute collects premiums, fees, assessments or other moneys for an insurance corporation.
- (3) “Company” means and includes any corporation, or any society or association, incorporated or unincorporated, or any partnership, or any underwriter that undertakes or effects for valuable consideration, or agrees or offers so to undertake or effect, in the Colony, any contract of insurance within the intent of this Chapter.
- (4) “Head Office” means the place where the chief executive officers of an insurance corporation transact its business.
- (5) “Benefit” includes all benefit, bonus and insurance moneys payable by the insurer under the contract; and “beneficiary” includes every person entitled to such moneys, and the

executors, administrators and assigns of any person so entitled.

- (6) "Preferred beneficiaries" constitute a class which includes the husband, wife, children, grand children and mother of the assured; all other beneficiaries may be known as "ordinary beneficiaries."
- (7) "Beneficiary for value" means a beneficiary for a valuable consideration other than marriage.
- (8) Insurance includes the following, whether the contract be one of insurance, or of re-insurance, and whether the premium payable be a sum certain, or consist of sums uncertain or variable in time, number or amount.
 - (a) Insurance against death or accident.
 - (b) Contracts of endowment, assessment endowment, tontine, semi-tontine, lifetime benefits, annuities on lives, or contracts of investments involving tontine or survivorship principles for the benefit of persisting members; or any contract of investment involving life contingencies.
 - (c) Any contract made in consideration of a premium and based on the expectancy or expectation or probability of life; or any contract made on such consideration, and having for its subject the life, safety or insurable interest of any person, where the benefit under the contract is primarily payable to the assured or to a donee, grantee, or assignee, or to trustees, guardians, or representatives, or to, or in trust for, any beneficiary, or to the assured by way of indemnity or insurance against any liability incurred by him through the death or injury of any person.
 - (d) Any investment contract under which lapses, or payments made by discontinuing members or investors, accrue to the benefit of persisting members or investors.
 - (e) Generally any contract in the nature of any of the foregoing, whereby the benefit under the contract accrues payable on or after the happening of some contingent event.
- (9) "Endowment Insurance" includes any contract of insurance which contains an undertaking to pay an ascertainable sum at a fixed future date, provided the assured is then alive.

An undertaking to pay such sum on the assured reaching the expectancy or expectation of life shall be deemed to be endowment insurance.

- (10) "The Insurer" means the company undertaking the contract of insurance or of re-insurance, as the case may be.
- (11) "The assured" means the person whose life or insurable interest is insured.
- (12) "Maturity" of an insurance contract means the happening of an event, or the expiration of the term at which the benefit under the contract accrues due.
- (13) "Premium" includes any valuable consideration given or promised for insurance.
- (14) "Contract of insurance," "policy of insurance," and "policy" include any certificate or contract hereinafter mentioned, or in any way relating to life insurance.

3. The provisions of this Chapter shall apply to every lawful contract of insurance in writing now in force or hereafter effected, and shall also extend to the said contracts of insurance where any declaration endorsed thereon or identifying the same by number or otherwise, though made before the passing of this Chapter, would be within the operation and provisions of this Chapter, if the same had been made subsequent thereto. Such provisions shall likewise extend and apply to membership, beneficiary and other certificates and contracts relating to life insurance issued or entered into by any society or association of persons, for any fraternal, provident, benevolent, industrial or religious purpose, among the purposes of which is the insurance of the lives of the members thereof exclusively, or by any association for the purpose of life insurance formed in connection with any such society or organization, and from among its members, and which insures the lives of such members, including certificates or contracts heretofore issued or entered into.

- 4.** (1) Where the assured is a person domiciled or resident in Newfoundland, or is so domiciled or resident at the maturity of the policy, the policy, certificate or writing evidencing the contract shall, if issued or delivered over in Newfoundland, or committed to the post office or to any carrier, messenger or agent to be delivered or handed over in Newfoundland to the assured, his assignee or agent, be deemed to evidence a

contract made in Newfoundland, and the contract shall be construed, and the rights and status of the beneficiary or beneficiaries thereunder shall be determined according to the law of Newfoundland, and all moneys payable under the contract shall be paid in Newfoundland at the office of the insurer or its chief officer or agent in lawful money.

(2) Any action to enforce such contract may be validly taken in any Court of competent jurisdiction in Newfoundland.

(3) This section shall have effect notwithstanding any agreement, condition or stipulation in the policy to the contrary.

5. In any contract of insurance against accident or casualty or disability, total or partial, the event insured against shall be deemed to include any bodily injury occasioned by external force or agency, and either happening without the direct intent of the person injured or happening as the indirect result of his intentional act, such act not amounting to voluntary or negligent exposure to unnecessary danger, and no term, condition, stipulation, warranty or proviso of the contract varying the aforesaid obligation or liability of the company shall, as against the assured, have any force or validity.

6. (1) Where any insurance contract, made by any corporation whatsoever within the intent of this Chapter, is evidenced by a sealed or written instrument, all the terms and conditions of the contract shall be set out by the corporation in full on the face or back of the instrument forming or evidencing the contract, and unless so set out, no term of, or condition, stipulation, warranty or proviso, modifying or impairing the effect of, any such contract made or renewed after the commencement of this Chapter shall be good and valid, or admissible in evidence to the prejudice of the assured or beneficiary. Nothing herein contained shall exclude the proposal or application of the assured from being considered with the contract, and the Court shall determine how far the insurer was induced to enter the contract by any material misrepresentation contained in the said application or proposal.

(2) No contract of insurance made or renewed after the commencement of this Chapter shall contain, or have endorsed upon it, or be made subject to, any term, condition, stipulation,

warranty or proviso providing that such contract shall be avoided by reason of any statement in the application therefor, or inducing the entering into of the contract by the corporation, unless such term, condition, stipulation, warranty or proviso is limited to cases in which such statement is material to the contract, and no contract of insurance within the intent of this Chapter shall be avoided by reason of the inaccuracy of any such statement, unless it is material to the contract.

- (3) The question of materiality in any contract of insurance whatsoever shall be a question of fact for the jury, or for the Court if there be no jury; and no admission, term, condition, stipulation, warranty or proviso to the contrary, contained in the application or proposal for insurance, or in the instrument of contract, or in any agreement or document relating thereto, shall have any force or validity.

7. In any insurance of the person, where the money payable by way of premiums, dues or assessments, (not being the initial premiums, dues or assessments), under any contract whatsoever is unpaid, any beneficiary or beneficiaries may, within thirty days from and including the first day on which the money is due, by registered letter or otherwise, pay, deliver or tender to the company at its head office, or at its chief agency in Newfoundland, or to the company's collector or authorized agent, the sum in default. On payment, delivery or tender, as aforesaid, by the assured, or by any of the beneficiaries under the contract, the contract shall be deemed to have been *ipso facto* revived or renewed, and any stipulation or agreement to the contrary shall, as against the assured or his beneficiaries, be utterly void. The thirty days hereinbefore mentioned shall run concurrently with the period of grace or credit (if any) allowed by the insurer for the payment of a premium, or of an instalment of premium, and nothing herein contained shall be deemed to extend the grace or credit beyond the total of thirty days.

8. (1) Where the age of a person is material to any contract, and such age is given erroneously in any statement or warranty made for the purpose of the contract, such contract shall not be avoided by reason only of the age being other than as stated or warranted, if it appears that such statement or warranty was made in good faith and without any intention to deceive, but the person entitled to recover on such con-

tract shall not be entitled to recover more than an amount which bears the same ratio to the sum that such person would otherwise be entitled to recover as the premium proper to the stated age of such person bears to the premiums proper to the actual age of such person, the said stated age and the actual age being both taken as at the date of the contract. Provided, that in no case shall the amount receivable exceed the amount stated or indicated in the contract. Provided also, that where the application for the contract of insurance expressly limits the insurable age, and where the actual age of the applicant for insurance at the date of his application exceeds the age so limited, the contract shall, during the life time of the assured, and not later than five years from the date of the contract, be avoidable at the discretion of the insurer within thirty days after the error in age comes to the knowledge of the insurer.

- (2) Where any error is discovered in respect to any contract of insurance, or of the premium or premiums paid or to be paid upon such contract, nothing herein contained shall be construed in any way to prevent at any time before the maturity of the contract an adjustment between the insurer and the insured, of the amount or amounts payable in respect to any insurance effected, or of the premium or premiums paid or to be paid.

9. Every lawful claim against an insurance company under any contract of insurance within the meaning of this Chapter, shall be payable on the expiration of thirty days after reasonably sufficient proof has been furnished to the company of the happening of the event on which claim was by said contract to accrue due, and any rules, conditions or stipulations to the contrary shall, as against the assured, be void; provided, however, that the insurance company may in its discretion pay the claim at any time before the expiration of said thirty days.

- 10.** (1) The assured may designate the beneficiary by the contract of insurance or by instrument in writing attached to or indorsed on, or identifying the said contract by number or otherwise, and may by the said contract or by the above mentioned, or by like instrument, apportion the insurance money, or by like instrument from time to time reapportion-

tion the same, or alter, or revoke the benefits or trusts, or add or substitute new beneficiaries or trustees, or divert the insurance money wholly or in part to himself or his estate; provided that the assured shall not alter, or revoke, or divert the benefit of any person who is, and is expressly stated in such policy or instrument to be a beneficiary for value; nor shall the assured divert the benefit of a person who is of the class of preferred beneficiaries to a person not of the said class, or to the assured himself, or to his estate.

- (2) This section shall apply not only to any future contract of insurance, and to any declaration made on or relating to any such contract, but also to any contract of insurance heretofore issued, and declaration heretofore made.
- (3) Nothing contained in this Chapter shall be held or construed to restrict or interfere with the right of any person to effect or assign a policy for the benefit of any one or more beneficiaries, in any other mode allowed by law.
- (4) If one or more of the beneficiaries die in the life time of the assured, and no apportionment or other disposition is subsequently made by the assured, the insurance shall be for the benefit of the surviving beneficiary or beneficiaries in equal shares if more than one; and if all the beneficiaries dies in the life time of the assured the insurance shall be for the benefit in equal shares of, the surviving infant children of the assured, and if there are no surviving infant children, then the benefit of the contract and the insurance money shall form part of the estate of the assured.
- (5) Until the insurer has received the original or a copy of any declaration, apportionment, will or other instrument of disposition in writing, affecting the assurance moneys or any portion thereof, or of any appointment or of any revocation of a trust, the insurer may deal with and obtain a valid discharge from the assured, or (as in the respective case may be) with and from his beneficiaries, (such beneficiaries not being persons under incapacity), or with and from his trustees, executors, administrators or assigns, in the same manner and with the like effect as if such declaration, apportionment, disposition, appointment or revocation had not been made.

11. Where the event has happened on the occurrence of which any benefit or insurance money is payable under the contract, but the amount payable is a matter of dispute, the amount payable by the insurer to the beneficiary shall *prima facie* be the maximum amount stated or indicated in the contract, and it shall lie on the insurer to prove the contrary.

12. (1) When the insurance money becomes due and payable, it shall be paid within the time prescribed by section 9 of this Chapter, and according to the terms of the policy or of any declaration or instrument as aforesaid, and shall, in the case of preferred beneficiaries, be free from the claims of any creditors of the assured, except as in section ten provided.

(2) Where the insurance money or part thereof is for the benefit, in whole or in part, of infants, and the infants are mentioned as a class and not by their individual names, the money shall not be payable to the infants until reasonable proof is furnished to the insurer of the number, names and ages of the infants entitled.

13. (1) The assured may, by the policy or by his will, or by any writing under his hand, appoint a trustee or trustees of the money payable under the contract of insurance and may, from time to time, revoke such appointment in like manner, and appoint a new trustee or new trustees, and make provision for the appointment of a new trustee or new trustees, and for the investment of the moneys payable under the contract. Payment made to such trustee or trustees shall discharge the insurance corporation.

(2) If no trustee is named in the contract of insurance, or appointed as mentioned in the next preceding sub-section, to receive the shares to which infants are entitled, their shares may be paid to the executors of the last will and testament of the assured, or to a guardian of the infants, duly appointed by the Supreme Court or a Judge thereof, or to the trustee appointed by the Supreme Court, or a Judge thereof, upon the application of the wife, or of the infants or their guardians, and such payment shall be a good discharge to the insurance corporation.

(3) Subject to the express terms of the trust instrument (if any),

any trustee named, as provided for in sub-sections (1) and (2) of this section, and any executor or guardian, may invest the money received in any security in which trustees under the law may invest trust funds, and may from time to time alter, vary and transpose the investments; and, where the money is held for infants, may also apply all or part of the annual income arising from the share, or presumptive share, of each of the infants, in or towards his or her maintenance and education, in such manner as the trustee, executor or guardian thinks fit, and may also advance to and for any of the infants, notwithstanding his or her minority, the whole or any part of the share of the infant of and in the money, for the advancement or preferment in the world, or on the marriage of such infant.

14. (1) Where under a contract made, or by law deemed to be made, in Newfoundland, or a contract issued by an insurance company having its head office in Newfoundland, the insurance money is payable to the representatives of a person who at his death was domiciled or resident in a foreign jurisdiction, and no person has become his personal representative in Newfoundland, the money may, on the expiration of two months after such death, be paid to the personal representative appointed by the Court of the foreign jurisdiction; provided it appears upon the probate or letters of administration, or other like document of such Court, or by a certificate of the Judge, under the seal of the Court, that it has been shown to the satisfaction of the Court that the deceased at the time of his death was domiciled or resident at some place within the jurisdiction of such Court.
- (2) When the contract of such insurance provides that the insurance money may be paid to the personal representative appointed by the Court of the jurisdiction in which the deceased was resident or domiciled at the time of his death the money may be paid to such representative accordingly at any time after the death aforesaid or according to the terms of the policy.
- (3) Where under a contract made, or by law deemed to be made, in Newfoundland the insurance money is payable to the representatives of a person who at the time of his death was domiciled or resident in a foreign jurisdic-

tion and died intestate, the money may, after the expiration of three months after such death, if no person has become his personal representative in Newfoundland, be paid to the person or persons entitled, according to the law of the foreign jurisdiction, to receive the money and give a discharge for the same as if such money were by the terms of the contract payable in such foreign jurisdiction.

- (4) When a testator domiciled or resident in a foreign jurisdiction, disposes of the insurance money by a will, valid according to the law of that jurisdiction, such money may be paid at any time after death, or according to the terms of the contract in that behalf to the person or persons entitled under such will to receive and give a valid discharge for money payable in such foreign jurisdiction.
- (5) Where it appears by any letters of guardianship, or other like document relating to persons under incapacity, issued or to be issued by a court in a foreign jurisdiction, or it appears by a certificate of the judge, under the seal of such Court, that it has been shown to the satisfaction of such Court that the assured at the maturity of the policy was domiciled or resident within its jurisdiction, and where security to the satisfaction of the Court has been given by the guardian or other like officer appointed by the said letters or document, then the Supreme Court or a Judge thereof, upon application for the appointment of the said guardian, or like officer, as trustee under this section, may dispense with the giving of security; provided it has also been shown that the infants, or other beneficiaries under incapacity, reside within the jurisdiction of the foreign Court, and that the proposed trustee is a fit and proper person, and that the security has, in accordance with the practice of such foreign Court, been given in respect of and for the due application and account of the money payable under the policy.
- (6) This section shall apply to policies heretofore issued, as well as to policies to be issued hereafter, and whether the death has occurred before the passing of this Chapter or not.
- 15.** (1) If there is no trustee, executor or guardian competent to receive the share of any infant in the insurance money, and

the insurer admits the claim or any part thereof, the insurer, at any time after the expiration of two months from the date of the admission of the claim or part thereof, may obtain an order from the Supreme Court for the payment of the share of the infant into Court, and in such case the costs of the application shall be paid out of the share (unless the Court otherwise directs), and the residue shall be paid into Court pursuant to the order, and such payment shall be a sufficient discharge to the insurer for the money paid; and the money shall be dealt with as the court may direct.

- (2) If the insurer does not, within thirty days from the time that the claim is admitted, either pay the same to some person competent to receive the money under this Chapter, or pay the same into the Supreme Court, the said Court or a judge thereof may, upon application made by some one competent to receive the said money or by some other person on behalf of the infant, order the insurance money, or any part thereof, to be paid to any trustee, executor or guardian competent to receive the same, or to be paid into Court to be dealt with as the Court or judge may direct, and any such payment shall be a good discharge to the insurer.
 - (3) The Court or a judge thereof may order the costs of the application, and any costs incidental to establishing the authority of the person applying for the order, to be paid out of such moneys, or by the insurer, or otherwise as may seem just, and the Court or judge may also order the costs of and incidental to obtaining out of Court moneys voluntarily paid in by an insurer to be paid out of such moneys.
- 16.** (1) If a person who has hitherto effected, or who hereafter effects, an insurance for the benefit of any preferred beneficiary or beneficiaries, whether such benefit appears by the terms of the policy or by endorsement thereon, or by any instrument referring to and identifying the policy, finds himself unable to continue to meet the premiums, he may surrender the policy to the insurer and accept in lieu thereof a paid-up policy for such sum as the premiums paid would represent, payable at death or at the endowment age, or otherwise, as the case may be, and in the same manner as the money insured by the original policy if not surrendered

would have been payable; and the company may accept the surrender and grant the paid-up policy, notwithstanding any declaration or direction in favor of any preferred beneficiary or beneficiaries.

- (2) The assured may, from time to time, borrow from the insurer, or from any other corporation, company or person on the security of the policy, such sum as may be necessary and shall be applied to keep the policy in force, and on such terms and conditions as may be agreed on; and the sums so borrowed, together with such lawful interest thereon as may be agreed, shall, so long as the contract remains in force, be a first lien on the contract and all moneys payable thereunder, notwithstanding any declaration or direction in favor of any preferred beneficiary or beneficiaries.
- (3) Where all the beneficiaries, whether preferred or ordinary, are of full age, they and the assured may surrender the contract of insurance, or assign the same, either absolutely or by way of security.
- (4) Where by any contract of insurance or by the declaration indorsed upon or attached to or identifying by its number or otherwise, any contract of insurance (whether such declaration has heretofore been or is hereafter made), it is provided that the contract shall be for the benefit of a person, and in the event of the death of such person, for the benefit of another person, such first mentioned person shall, if living, be deemed for the purposes of the next preceding sub-section, the person entitled to be benefitted under such contract.
- (5) This section shall apply not only to any future contract of insurance, and to any declaration made or relating to any such contract, but also to any contract of insurance heretofore issued and declaration heretofore made.

17. (1) When a person (hereinafter called the assured) effects insurance on his or her own life, and either by the contract of insurance, or by instrument in writing attached to or indorsed on, or identifying the said contract by number or otherwise, declares the insurance money or a portion of the principal or interest thereof to be for the benefit of the husband, wife, children, grand-children or mother of the as-

sured, then such contract shall (subject to the right of the assured to apportion or alter as hereinafter enacted) create a trust in favor of the said beneficiary or beneficiaries, according to the intent so expressed or declared, and so long as any object of the trust remains, the money payable under the contract shall not be subject to the control of the assured, or of his or her creditors, or form part of his or her estate, when the sum secured by the contract becomes payable; but this shall not be held to interfere with any pledge of the policy to any person prior to such declaration.

- (2) In the case of a policy or written contract of life insurance effected before marriage, a declaration under this section shall be, and shall be deemed to be as valid and effectual as if such policy or contract had been effected after marriage.
- (3) Where a contract of life insurance is effected by an unmarried man, for the benefit of his future wife, or future wife and children, but the contract does not designate by name or otherwise clearly ascertain a specific person as such intended wife, the contract (not being within the intent of sub-section five or six hereof) shall be construed as provided in sub-section seven.
- (4) Where a contract is effected, as in sub-section three, but at the maturity of the contract the assured is still unmarried, or is a widower without issue, the insurance money shall fall into and become part of the estate of the assured.
- (5) Where a contract of life insurance is effected by an unmarried man for the benefit of his future wife, or future wife and children, and the intended wife is designated by name, or is otherwise clearly ascertained in the contract, but the intended marriage does not take place, all questions arising on such contract shall be determined as if in the case of a beneficiary not of the class of preferred beneficiaries.
- (6) When two or more beneficiaries are designated or ascertained but no apportionment as among them is made, all the said beneficiaries shall be held to share equally in the same, and where it is stated in the policy or declaration that the insurance is for the benefit of the wife and children generally, or of the children generally, without specifying the names of the children, the word "children" shall be held to

mean all the children, issue of the assured, living at the maturity of the policy, whether by his then or any former wife, and the wife to benefit by the policy shall be the wife living at the maturity thereof.

- (7) If one or more of the preferred beneficiaries in whose favor the apportionment has been made, die in the life time of the assured, the assured may, by an instrument in writing, attached to or endorsed on or referring to and identifying the policy by number or otherwise, declare that the share formerly apportioned to the person so dying shall be for the benefit of such other person or persons as he may name in that behalf, not being other than one or more of the class of preferred beneficiaries; and in default of any such declaration, the share of the person so dying shall be for the benefit of the survivor or survivors of such beneficiaries in equal shares.
- (8) This section shall apply, not only to any future contract of insurance, and to any declaration made on or relating to any such contract, but also to any contract of insurance heretofore issued and declaration heretofore made.

18. The assured may, by an instrument in writing attached to or endorsed on, or identifying the policy by its number or otherwise, vary a policy or declaration, or any apportionment previously made, so as to restrict or extend, transfer or limit, the benefits of the policy to the wife alone or to the children, or to one or more of them, or to the mother or any other preferred beneficiary of the assured, as a beneficiary or sole beneficiary, although the policy is expressed or declared to be for the benefit of the wife and children, or of the wife alone, or of the child or children alone, or of the mother, or such other preferred beneficiary, or for the benefit of the wife for life, and of the children after her death, or for the benefit of the wife, and, in case of her death during the life of the assured, then for the child or children, or any of them, or for the benefit of any one or more of the survivors; or although a prior declaration was so restricted; and he may also apportion the insurance money among the persons so intended to be benefitted, and may from time to time, by instrument in writing attached to or indorsed on the policy, or referring to the same, alter the apportionment as he deems proper; he may also, by his will, make or alter the apportionment of the insurance money; and an apportionment made or altered by his will shall prevail over any other made before the date of the will, except so far as such other apportionment has been

acted on before notice of the apportionment by will; and whatever the assured may, under this section, do by an instrument in writing attached to or indorsed on or identifying the policy, or a particular policy or policies, by number or otherwise, he may also do by a will identifying the policy, or a particular policy or policies, by number or otherwise.

- (2) "Apportion" or "apportionment" in this section shall include and authorize any division, sub-division, re-apportionment, or disposition of insurance moneys or benefits among any of the class of persons who under this Chapter are persons included in the class of preferred beneficiaries; and shall also include and authorize any disposition of the said moneys or benefits such as partly or wholly to divest the right or to enlarge or diminish the interest of a beneficiary or beneficiaries acquired under any prior disposition of the said moneys or benefits, or such as to substitute one beneficiary of the said class for any other, or all others, or conversely. Provided, that the assured shall not, by virtue of the preceding sub-sections be authorized to divert the said moneys or benefits from all of the said class to a person not of the said class, or to the assured himself, or to his estate, and to divert the said insurance moneys or benefits, or any part thereof, from the original beneficiary where the policy expressly states that the beneficiary was a beneficiary for value.

- 19.** (1) The assured may, in writing, require the insurer to pay the bonuses or profits, or portions thereof, accruing under the contract of insurance, to the assured, or to apply the same in reduction of the annual premiums payable by the assured, in such a way as he may direct; or to add the said bonuses or profits to the benefit; and the insurer shall pay or apply such bonuses or profits as the assured directs; and according to the rates and rules established by the insurer; provided always, that the insurer shall not be obliged to pay or apply such bonuses or profits in any other manner than is lawfully stipulated in the contract or the application therefor. This section shall apply to contracts of insurance heretofore made, and to bonuses and profits declared or earned in respect thereto as well as to contracts of insurance hereafter to be made.

- (2) Any contract of insurance may be surrendered or assigned—

- (a) Where the policy is for the benefit of children only, and the

children surviving are of the full age of twenty-one years, if the assured and all such surviving children agree to surrender or assign; or

- (b) Where the policy is for the benefit of both a wife and children, and the surviving children are of the full age of twenty-one years, if the assured and his then wife (if any) and all such surviving children agree to surrender or assign; or
- (c) Where the policy is for the benefit of a wife only, or of a wife and children, and there are no children living, if the assured and his then wife agree to surrender or assign.

CHAPTER 194.

Of Life Insurance Companies.

SECTION

- 1.—Short title.
- 2.—Interpretation section.
- 3.—Life Insurance Companies not to do business without a license.
- 4.—Form of license.
- 5.—Issue of license.
- 6.—Deposit of securities.
- 7.—Nature of security.
- 8.—Annual statement by company.
- 9.—If liabilities of company exceed deposit further deposit shall be made.
- 10.—Other securities may be accepted on conditions.
- 11.—If securities decline in value further deposit shall be made.
- 12.—Interest on securities shall be paid to the companies.
- 13.—Certain documents to be filed.
- 14.—Form of power of attorney.
- 15.—Respecting changes in agents and agencies.
- 16.—Service of process on company.

SECTION

- 17.—Publication of notice of license.
- 18.—Penalty for doing business without a license.
- 19.—Respecting the examination into the affairs of the companies by the Minister of Finance.
- 20.—Powers of the Minister of Finance.
- 21.—Power of companies ceasing to do business to collect premiums under certain conditions.
- 22.—Power to withdraw license.
- 23.—Renewal of license withdrawn.
- 24.—Renewal of license withdrawn.
- 25.—Respecting the discontinuance of business and the release of assets in Newfoundland.
- 26.—Mode of making tender.
- 27.—Method of computing reserve.
- 28.—Release of securities deposited.
- 29.—Deposit security for Newfoundland policy holders only.
- 30.—Act not to apply to certain associations.

1. This Chapter may be cited as "The Insurance Companies Act."

2. In this Chapter unless the context otherwise requires—

- (1) The expression "Minister" means Minister of Finance and Customs.
- (2) The expression "Company" means and includes any corporation or any society or association incorporated or unincorporated or any partnership carrying on the business of insurance;
- (3) The expression "Agent" means the chief agent of the company in Newfoundland named as such in the power of attorney hereinafter referred to, by whatever name he is designated;
- (4) The expression "Agency" means the principal office or place of business of the company in Newfoundland;
- (5) The expression "Newfoundland Policy" or "Policy in Newfoundland" means a policy issued by any company licensed under this Chapter to transact the business of life insur-

ance in Newfoundland, in favor of any person or persons resident in Newfoundland at the time when such policy was issued, and "Policy-holder in Newfoundland" means any such person as aforesaid.

3. (1) No company or person except as hereinafter provided shall accept any risk or issue any policy of life insurance or grant any annuity on a life or lives or receive any premium or carry on any business of life insurance in Newfoundland, or prosecute or maintain any suit, action or proceeding either at law or in equity, or file any claim in insolvency relating to such business without first obtaining a license from the Minister to carry on such business in Newfoundland.

- (2) Before issuing a license to a company legally formed elsewhere than in Newfoundland, the Minister must be satisfied that the corporate name of the company is not that of any other known company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

4. The license shall be in such form as is from time to time determined by the Minister, and it shall expire on the 31st day of October in each year, but shall be renewable from year to year.

5. The Minister, as soon as the company applying for the same, has deposited in his hands the security hereinafter mentioned, and has otherwise conformed to the requirements of this Chapter, shall issue such license as aforesaid.

6. Every company carrying on the business of life insurance shall, before the issue of such license, deposit with the Minister in such securities as are hereinafter mentioned, the sum of twenty-five thousand dollars.

7. It shall be lawful for the Minister to receive the deposit of such company in Newfoundland, British, British Colonial or foreign Government securities at their then market value.

8. Every company shall, before the 31st day of October in each year, furnish to the Minister a statement of its affairs as nearly as possible according to the form provided in Schedule A., made up to the last balancing day of the company, and in default shall be liable to a penalty of ten dollars for every day after said date during which such default continues.

9. If it appears from the annual statements or from an examination, as provided by this Chapter, of the affairs and conditions of any company carrying on the business of life insurance, that its liabilities to policy-holders in Newfoundland, including matured claims and the reserve or re-insurance value of outstanding policies, as hereinafter described, after deducting any claims the company has against such policies, exceed its deposit in the hands of the Minister, the company shall be called upon by the Minister to make good that deficiency by depositing such further sum in securities as hereinbefore mentioned, with the Minister, as shall be sufficient therefor, and on its failure to do so within sixty days, he shall withdraw its license.

10. If any securities other than those above mentioned are offered as a deposit they may be accepted at such valuation and on such conditions as the Minister directs.

11. If the market value of any of the securities which have been deposited by any company declines below that at which they were deposited, the Minister may notify the company to make a further deposit so that the market value of all securities deposited shall be equal to the amount which it is required by this Chapter to deposit, and on failure to make such further deposit the Minister may withdraw its license.

12. So long as the conditions of this Chapter are satisfied by any company, and no attachment or notice of any final judgment against the company, or order made by the proper Court in that behalf for the winding up of the company or the distribution of its assets is served upon the Minister, the interest upon the securities forming the deposit shall be handed over to the company as it falls due.

13. Any company obtaining such license as aforesaid, shall, before the transaction of any business of insurance, file in the office of the Minister a certified copy of the Charter, Act of Incorporation or Articles of Association of the company, and a power of attorney from the company to its agent in Newfoundland, under the seal of the company, and signed by the President and Secretary or other proper officer thereof, and verified as to its authority by the agent of such company in Newfoundland, or by notarial certificate.

14. Such power of attorney shall declare at what place in Newfoundland the chief agency of such company is or is to be established, and shall expressly authorize such attorney to receive service of process in all suits and proceedings against such company in this Colony in respect of

any liabilities incurred by the company therein, also to receive from the Minister all notices which the law requires to be given or which it is thought advisable to give, and shall declare that service of process for or in respect of such liabilities and receipt of such notices at such chief agency, or personally on or by such attorney at the place where such chief agency is established, shall be legal and binding on the company to all intents and purposes whatsoever.

15. Whenever any such company changes its chief agent or chief agency in Newfoundland, such company shall file a power of attorney as hereinbefore mentioned, containing any such change or changes in respect thereof, and containing a similar declaration as to service of process and notices as hereinbefore mentioned, and every company shall, at the time of making the annual statement hereinbefore provided for, declare that no change or amendment has been made in the Charter, Act of Incorporation or Articles of Association of the company, and that no change has been made in the chief agency or chief agent without such amendment or change having being duly notified to the Minister.

16. After such power of attorney is filed as aforesaid, any process in any suit or proceeding against any such company in respect of any liabilities incurred in this Colony may be validly served on the company at its chief agency, and such service shall be deemed to be service on the company.

17. Every company obtaining such license as aforesaid shall forthwith give due notice thereof in the *Royal Gazette*, and at least one other newspaper in the Colony, and shall continue the publication thereof for the space of one month, and the like notice shall be given when such company shall cease, or notify that they intend to cease, to carry on business in Newfoundland.

.. . . .

18. Any person who shall deliver any policy of insurance on behalf of any such company without a license as aforesaid, or if such license shall have been withdrawn without the renewal thereof or without filing the copy of the Charter, Act of Incorporation or Articles of Association of the company, and a power of attorney as hereinbefore provided, shall be liable to a penalty not exceeding five hundred dollars for each contravention of this Chapter, which penalty may be recovered in the Supreme Court of Newfoundland by any person suing for the same; a moiety of which penal-

ty when recovered shall go to the person suing for the same and a moiety to the Minister for the use of the Colony.

19. The Minister shall cause an examination to be made from time to time upon all matters connected with insurance as carried on by the several companies licensed to do business in Newfoundland or required by this Chapter to make returns of their affairs.

(1) The Minister shall cause a record to be kept of the several documents required to be filed by each company under this Chapter, and shall—

(a) Cause to be entered in a book under the heading of each company the securities deposited on its account with him, naming in detail the several securities, their par value, and the value at which they are received as deposit;

(b) In each case, before the issue of any new license or the renewal of any license, cause a report to be made to him that the requirements of the law have been complied with, and that from the statement of the affairs of the company it is in a condition to meet its liabilities;

(c) Keep a record of the licenses as they are issued.

(d) Cause the agency of each company in Newfoundland to be visited at least once in every year, and the statements of the conditions and affairs of each company to be examined carefully, as required under this Chapter, and a report thereon made to him as to all matters requiring his attention and decision.

(e) Cause to be prepared for him from the said statements an annual report showing the full particulars of each company's business giving items classified from the statements made by each company.

(2) The officers or agents of such company shall cause their books to be opened for the inspection of the Minister, and shall otherwise facilitate such examination so far as it is in their power, and for that purpose the Minister may examine under oath the officers or agents of such company relative to its business.

(3) A report of all companies so visited shall be entered in a book

to be kept for that purpose, with notes and memoranda showing the condition of each company after such investigation.

- (4) Once in every five years, or oftener, the Minister shall himself value or procure to be valued, under his supervision, all Newfoundland policies of life insurance companies licensed under this Chapter to transact the business of life insurance in Newfoundland, and such valuation shall be based on the mortality table of the Institute of Actuaries of Great Britain, and on a rate of interest of $3\frac{1}{2}$ per cent. per annum.

In this sub-section the word "policies" includes annuity contracts; provided, however, that in valuation of annuity contracts the table of mortality experience of (British) Government life annuities may be used instead of the table of the Institute of Actuaries in this section mentioned.

20. For the purpose of carrying out the provisions of this Chapter, the Minister is hereby authorized and empowered to address any enquiries to any insurance company licensed under this Chapter, or the president, manager, actuary or secretary thereof, in relation to its assets, investments, liabilities, doings or condition, or any other matter connected with its business or transactions, and it shall be the duty of any company so addressed promptly to reply in writing to any such enquiries.

21. In the case of any company which previously to the passing of this Chapter transacted the business of life insurance in Newfoundland, and which ceased to transact such business before the thirty-first day of October, 1906, having before that date given written notice to the Minister, the premiums due or to become due on policies, actually issued before the last mentioned date, may continue to be collected, and the claims arising thereon may be paid, and all business appertaining thereto, either at law or in equity, may be continued or commenced and prosecuted.

22. Whenever satisfactory proof has been furnished to the Minister of any undisputed claim upon a company arising on any policy of life insurance in Newfoundland remaining unpaid for the space of ninety days after becoming due, or of a disputed claim remaining unpaid after final judgment in a regular course of law and tender of a legal valid discharge

made to the agent of such company, the Minister may withdraw the license of such company.

23. Such license may be renewed, if within thirty days after such withdrawal such undisputed claims or final judgments upon or against the company are paid and satisfied.

24. When the license of a company has been withdrawn under any of the provisions of this Chapter, such license may be renewed if within sixty days after such withdrawal such company complies with the requirements of this Chapter to the satisfaction of the Minister.

25. When any company licensed under this Chapter desires to discontinue business and have its assets in Newfoundland released, and gives written notice to that effect to the Minister, it may, with the consent of the policy holders, procure the transfer of its outstanding policies in Newfoundland to some company or companies licensed under this Chapter in Newfoundland, or may obtain the surrender of the policies as far as practicable.

- (1) The company shall file with the Minister a list of all Newfoundland policy holders whose policies have been so transferred or have been surrendered, and also a list of those which have not been transferred or surrendered.
- (2) The company shall at the same time publish in the *Royal Gazette* a notice that it will apply to the Minister for the release of its assets and securities on a certain day, not less than three months after date of the notice, and calling upon its Newfoundland policy holders opposing such release to file their opposition with the Minister on or before the day so named.
- (3) After that day, upon the application for the release being made, if the Minister, with the concurrence of the Governor in Council, is satisfied that such transfer or surrender has been effected, he may direct that a portion of the securities held by the Minister shall be retained, sufficient in amount to cover the full equitable net surrender value of such policies (including bonus additions and accrued profits) as have not been transferred or in respect of which opposition has been filed, and may order the remaining assets or secur-

ities aforesaid to be released and transferred or paid over to the company.

(4) The portion retained shall be tendered in the manner hereinafter described to the aforesaid policy-holders *pro rata*, according to the aforesaid values of their respective policies, and, on the acceptance of the amounts so tendered, such policies shall be thereby deemed to be cancelled; but if such tender be refused by any policy-holder the amount so tendered may be paid over to the company and the policy shall continue in force, and such policy-holder shall not be barred from any recourse he has either in law or in equity against the company to compel the fulfilment of its contract under such policy.

(5) Nothing herein contained shall prevent any policy holder from making special arrangements with the company whereby his policy may be continued in force, and on proof being given of such arrangement, such policy may be admitted to or removed from the above mentioned list of policies, and this Chapter shall thereafter not apply in respect of such policy.

26. (1) The tender referred to in the next preceding section shall be made in the following manner:—

(a) A list and notice in the form B in the Schedule to this Chapter, or to the like effect, shall be published in the *Royal Gazette* for at least thirty days previously to the day named in such notice.

(b) The company shall also cause the said list and notice to be published in such newspapers in Newfoundland and for such length of time as the Minister determines.

(c) A notice in the form C in the Schedule to this Chapter, or to the like effect, shall be sent by mail (postpaid or franked) from the office of the Minister to each policy holder named in the said list whose address is known to him, and such notice shall be deposited in some Post Office in Newfoundland at least thirty days previously to the day named therein, which shall be the same day as that named in the list and notice above mentioned.

- (d) Any policy holder who does not signify in writing to the Minister his acceptance of the amount so tendered on or before the day named in the said notice shall be deemed to have refused the same, but the Minister may at any time prior to the payment over to the company of the amount so refused, allow any policy holder to signify his acceptance of such amount, which acceptance so allowed shall have the same effect as if made on or before the day named in the said notice.
- (2) In this and the next preceding section the word "policy holder" means the person to whom the policy is issued and with whom the contract for assurance is made, and includes the assignee of such person.
- 27.** (1) In computing or estimating the reserve necessary to be held in order to cover its liability to policy holders each company may, as to policies issued on or after the first day of January, one thousand nine hundred, and bonus additions and profits accrued or declared in respect thereof, employ any of the standard tables of mortality as used by it in the construction of its tables and any rate of interest not exceeding three and one-half per cent. per annum, and as to policies issued prior to the said date and bonus additions or profits accrued or declared in respect thereof, may, until the first day of January, one thousand nine hundred and ten employ any such tables of mortality and any rate of interest not exceeding four and one-half per cent. per annum; and on and after the said last mentioned date may, until the first day of January, one thousand nine hundred and fifteen, employ any of such standard tables of mortality and any rate of interest not exceeding three and one-half per cent. per annum; but if it appears to the Minister that such reserve falls below that computed on the basis stated in sub-section 4 of section 19 of this Chapter, he shall compute, or procure to be computed under his supervision, the reserve on the basis therein mentioned, and the amount so computed, if it differs materially from the return made by the company, may be substituted in the annual statement of assets and liabilities, and in such case the company shall furnish the Minister, on application, the full particulars of each of its policies necessary for such computation, and

shall pay to the Minister an amount at the rate of three cents for each policy or bonus addition so computed.

(2) Any company, instead of itself computing or estimating the reserve above mentioned, may require it to be computed by the Minister on the basis stated in the said sub-section 4 of section 19 of this Chapter on payment of a like amount as is mentioned in the next preceding sub-section.

(3) In this section the word "policies" includes annuity contracts, and the expression "policy-holders" includes the holders of annuity contracts.

28. After any company shall have ceased to transact any business in Newfoundland, and shall have given the notice required by this Chapter to that effect, it shall be lawful for the Governor in Council to authorize the whole or any part of the securities so held on deposit for any company as aforesaid, to be released and transferred to the company upon being satisfied that it has no liabilities upon policies issued in Newfoundland, and that no suit or other proceedings are pending against the company therein.

29. Such deposits as are herein provided for shall be construed to be for the security of holders of policies issued by companies or their agents in Newfoundland, and not for the general security of all holders of policies under the said company.

30. This Chapter shall not apply to any association in connection with friendly or charitable societies in this Colony when carried on for the mutual benefit of the members, but such mutual insurance associations shall publish a statement of their affairs annually in the *Royal Gazette* and at least one other newspaper in this Colony.

SCHEDULE.

FORM A.

Details of Yearly Statement.

Property or assets held by the company, specifying assets.

The value (as nearly as may be) of the real estate held by the company.

The amount secured by way of loan on real estate, whether by mortgages, bonds, or any other security, distinguishing between those having first or second lien on such real estate.

The amount of loans secured by bonds or stock, or other collateral.

The amount of loans as above on which interest has not been paid within one year previous to such statement, with a schedule thereof.

The amount of loans made in cash to policy holders in Newfoundland on the company's policies assigned as collateral.

Liabilities.

Net present value of all outstanding policies in force, with mode of computation or estimation deducting those reinsured.

Claims for death losses and matured endowments, and annuity claims due and unpaid, or in process of adjustment or adjusted, but not due or resisted.

Income.

Amount of cash premiums received, less re-insurances, premium notes, loans or liens taken in part payment for premiums, and premiums paid by dividends and by surrendered policies. All other income in detail.

Expenditure.

Total amount actually paid for losses and matured endowments.

Total amount actually paid for losses and matured endowments in Newfoundland.

Cash paid to annuitants and for surrendered policies.

Cash paid to annuitants and for surrendered policies in Newfoundland.

Premium notes, loans or liens used in purchase of surrendered policies.

Premium notes, loans or liens used in purchase of surrendered policies in Newfoundland.

The same voided by lapse.

Cash surrender values applied in payment of premiums.

Cash surrender values applied in payment of premiums in Newfoundland.

Cash paid for commissions, salaries, and other expenses of officials.

Cash paid for commissions, salaries, and other expenses of officials in Newfoundland.

Cash paid for taxes, licenses, fees or fines.

Exhibit of Policies.

Number and amount of policies and additions in full at the end of the previous year.

Number and amount of policies and additions in full at the end of the previous year in Newfoundland.

New policies and charges.

New policies and charges in Newfoundland.

Policies terminated and the manner of termination.

Policies terminated and the manner of termination in Newfoundland.

Number and amount of policies in force at date of statement.

Number and amount of policies in force at date of statement in Newfoundland.

Reinsurance.

Reinsurance in Newfoundland.

FORM B.

In the matter of the (*here insert name of the company*).

Notice is hereby given that the Minister of Finance has, pursuant to the and sections of "The Insurance Companies Act," directed assets to be retained sufficient in amount to cover the full equitable net surrender value of the policies in the above company (including bonus additions and accrued profits) which have not been transferred or surrendered or in respect of which opposition has been filed as provided by the said section, and the assets so retained are hereby tendered to the aforesaid policy holders *pro rata*, according to the aforesaid values of their respective policies. A list of such policy-holders and of the amounts tendered to them respectively is hereunder given, and notice is hereby given that any policy-holder not signifying in writing to the Minister his acceptance of the amount hereby tendered to him on or before the day of, shall be deemed to have-

refused the same, and the amount tendered may, pursuant to the said Act, be paid over to the company.

List of Policy-Holders and Amount Tendered.

Name.	Address as far as known.	Amount and No. of Policies.	Amount Tendered.

Dated this day of

(Signed),,
Minister of Finance, Newfoundland.

FORM C.

Department of Finance.

19...

In the matter of the (*here insert the name of the company*).

You are hereby notified that the Minister of Finance has, pursuant to the section of the "Insurance Companies' Act," directed assets to be retained sufficient in amount to cover the full equitable net surrender value of the policies in the above company, including bonus additions and accrued profits which have been transferred or surrendered, or in respect to which opposition has been filed as provided by the said section. The assets so retained are tendered to the aforesaid policy holders *pro rata*, according to the aforesaid values of their respective policies.

The amount hereby tendered to you, and the policy or policies in respect of which the same is tendered, are given below, and you are hereby notified that, unless on or before the day of, A. D. 19.., you signify in writing to the Minister of Finance your acceptance of the amount hereby tendered you shall be deemed to have refused the same, and the amount tendered may, pursuant to the said Act, be paid over to the company.

Yours, etc.,

(Signed), *Minister of Finance.*

Name.	Number and Amount of Policy.	Amount tendered.

CHAPTER 195.

Of Accident Insurance Companies.

SECTION

- 1.—No accident Insurance Company to do business without license.
2.—Form of License and fee.

SECTION

- 3.—Respecting annual report.
4.—Additional information.
Schedule.

1. No company or person shall carry on the business of accident, guarantee, or fidelity insurance, or issue any policy in respect of any such insurance, or prosecute or maintain any suit, action or proceeding, or file any claim in insolvency, in relation to any such business or policy, without first obtaining a license from the Minister of Finance and Customs.

2. The license shall be in such form as the Minister of Finance and Customs shall determine, and shall expire on the 31st day of October of each year, but shall be renewable from year to year. The fee for the said license and for each annual renewal thereof, shall be fifty dollars, to be paid before the issue or renewal of the same.

3. Every company or person carrying on any such insurance business as aforesaid, shall, before the 31st day of October in every year, furnish to the Minister a statement of its or his affairs as nearly as possible according to the form in the Schedule hereto provided, and, in default, shall be liable to a penalty of ten dollars for every day after said date during which such default continues.

4. Every company or person as aforesaid shall, when required by the Minister, furnish any further information as to its business in addition to that contained in said annual statement, under a penalty of ten dollars for any refusal or neglect when so required.

SCHEDULE.

1. No. and amount of accident policies in force in Colony.
2. No. and amount of new policies issued during the year.
3. Premium income for the past year.
4. No. and amount of claims paid for accidents and deaths during year.

5. No. and amount of guarantee and fidelity policies in force in Colony.

6. No. and amount of such new policies issued during year.

7. Premium income for year.

8. No. and amount of claims paid during year.

CHAPTER 196.

Of the Currency.

SECTION

- 1.—Denomination of money to be in dollars and cents.
- 2.—British sovereign legal tender for four dollars and eighty-six cents and two-thirds of a cent.
- 3.—Silver coins of the United Kingdom to pass current after the aforesaid rate.
- 4.—Copper coins a legal tender.
- 5.—Gold eagle coined after 1834 legal tender for ten dollars.
- 6.—Proof of date, &c., of coins.

SECTION

- 7.—Certain gold, silver, copper or bronze coins, struck by order of His Majesty, to be a legal tender throughout Nfld.
- 8.—Coins heretofore imported a legal tender.
- 9.—Amount which may be tendered in one payment.
- 10.—No other coins of silver or copper to be so.
- 11.—Defaced coin not a legal tender.
- 12.—Person counterfeiting any coin shall be guilty of felony; Penalty, &c.
- 13.—Penalty for uttering.

1. The denomination of money in the currency of Newfoundland shall be dollars and cents, in which currency the cent shall be the one-hundredth part of a dollar. All accounts shall be kept, and all moneys paid and received in such currency: and in any statement as to money or money value, in any indictment or legal proceeding, the same shall be stated in such currency. No statement of account of any debt contracted within this Colony by parties resident within this Colony shall be binding or valid unless the same shall be rendered, stated or declared in dollars and cents.

2. The British sovereign, of the weight and fineness now prescribed by the laws of the United Kingdom shall be equal to and shall be a legal tender and pass current for four dollars and eighty-six cents and two thirds of a cent of the currency of Newfoundland, and a half-sovereign of proportionate weight and like fineness for one-half of the said sum.

3. The silver coins of the United Kingdom while lawfully current therein, shall pass current and be legal tender for sums in the currency of Newfoundland after the rate fixed, as aforesaid, for the gold coins of the United Kingdom, according to the proportion such silver coins bear to such gold coins.

4. The copper or bronze coins of the United Kingdom shall pass current and be legal tender in this Colony.

5. His Majesty may, by proclamation, from time to time fix the rates at which any foreign gold coins of the description, date, weight and

fineness, mentioned in such proclamation, shall pass current and be a legal tender in Newfoundland: Provided, that until it is otherwise ordered by any such proclamation, the Gold Eagle of the United States of America, coined after the 1st day of July, one thousand eight hundred and thirty-four, and before the 1st day of January, one thousand eight hundred and fifty-two, or after the said last mentioned day, but while the standard of fineness for gold coins then fixed by the laws of the said United States remains unchanged, and weighing ten pennyweights, eighteen grains Troy weight, shall pass current and be a legal tender in Newfoundland for ten dollars, and the gold coins of the said United States being multiples and halves of the said Eagle and of like dates and proportionate weights, shall pass current and be a legal tender in Newfoundland for proportionate sums.

6. The stamp of the year on any foreign coin made current by this Chapter or any proclamation issued under it, shall establish *prima facie* the fact of its having been coined in that year and the stamp of the country on any foreign coin shall establish *prima facie* the fact of its being the coinage of such country.

7. The gold, silver, copper or bronze coins which His Majesty may cause to be struck for circulation in Newfoundland shall pass current and be a legal tender in Newfoundland at the rates assigned to them, respectively, by His Majesty's Proclamation, the standard of fineness of such coins being the same as that now adopted for coins of the United Kingdom and their intrinsic value bearing the same proportion to their current value as coins of the United Kingdom bear to their current value.

8. All gold, silver, copper and bronze coins heretofore imported by the Governor in Council into this Colony shall pass current and be a legal tender under this Chapter at the rates expressed on the face of the said coins respectively.

9. All such silver coins aforesaid shall be a legal tender to the amount of ten dollars only, and such copper or bronze coins to the amount of twenty-five cents only in any one payment.

10. No other silver, copper or bronze coins than those aforesaid shall be a legal tender in Newfoundland.

11. No tender of payment in money in any gold, silver or copper coin, which has been defaced by stamping thereon any name or word,

whether such coin is or is not thereby diminished or lightened, shall be a legal tender.

12. Any person who shall falsely make or counterfeit any coin resembling, or apparently intended to resemble, or pass for any gold or silver coin current under or by virtue of this Chapter or any proclamation thereunder, or who shall import into this Colony any such false or counterfeit coin, shall be guilty of felony and being convicted thereof shall be liable to be imprisoned, with hard labor, for any term not exceeding four years, and every such offence shall be deemed to be complete, although the coin so made or counterfeited shall not be in a fit state to be uttered or the counterfeiting thereof shall not be finished or perfected.

13. Any person who shall tender, utter or put off any such false or counterfeit coin, knowing the same to be false or counterfeit, shall be guilty of a misdemeanor, and being convicted thereof, shall be imprisoned, with hard labour, for any term not exceeding one year.

CHAPTER 197.

Of Paper Currency.

SECTION

- 1.—Bank.
- 2.—Bank may not issue, &c., bill, &c., for less than \$5, intended to circulate as money.
- 3.—Except by leave of Governor in Council.

SECTION

- 4.—Every person who issues bills, &c., intended to circulate as money to incur a penalty; Presumption of intention.
- 5.—Bank not to charge discount for cashing cheque for Government.
- 6.—Appeal from court of summary jurisdiction.

1. In this Chapter the expression “bank” shall mean any bank doing business in Newfoundland.

2. It shall not be lawful for any bank to issue, or re-issue, put into or return into circulation, make, draw or indorse any bill, bond, note, cheque or other instrument intended to circulate as money or to be used as a substitute for money, for any amount less than five dollars, under a penalty not exceeding four hundred dollars, which shall be recoverable with costs in any Court of summary jurisdiction.

3. The Governor in Council may permit any bank to issue or re-issue bills, notes, cheques or other instruments included in the provisions of the next preceding section of such description and to such amount as may be determined by Order in Council.

4. (1) Every person, except a bank, who issues or re-issues, makes, draws, or indorses, any bill, bond, note, cheque or other instrument intended to circulate as money, or to be used as a substitute for money for any amount whatsoever, shall incur a penalty not exceeding four hundred dollars, which shall be recoverable with costs in any Court of summary jurisdiction.

(2) The intention to pass any such instrument as money shall be presumed, if it is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation or as a substitute for money; unless such instrument is a cheque on some bank

doing business in this Colony, paid by the maker direct to his immediate creditor, or a promissory note, bill of exchange, bond, or other undertaking for the payment of money paid or delivered by the maker thereof to his immediate creditor, and is not designed to circulate as money or as a substitute for money.

5. No bank shall charge any discount or commission for cashing any official cheque of the Government of Newfoundland, or of any department thereof, whether drawn on itself or on another bank.

6. Any person feeling himself aggrieved by the judgment or order of any Court of summary jurisdiction under this Chapter, in which a sum of twenty-five dollars or upwards is involved, shall have the right to appeal therefrom to the Supreme Court at its next sittings in St. John's, or on circuit nearest to the place where the offence shall have been committed: Provided that notice of such appeal be given to such magistrate within four days after such order or judgment shall have been made or given; and provided recognizances or other security, satisfactory to the magistrate or justice who shall have tried the case, be entered into within the same period for the prosecution of such appeal without delay, and for the payment of the penalty imposed in case such order or judgment be sustained, and all costs.

CHAPTER 198.

Of Cash Notes.

SECTION

- 1.—Cash Notes may be issued for certain services.
- 2.—Form of Notes.
- 3.—Notes to be supplied to several Departments.
- 4.—Respecting issue of Notes.
- 5.—Notes to be supplied to Commissioners and others.
- 6.—Notes to be payable at Bank.

SECTION

- 7.—Moneys appropriated to be applied to payment of Notes.
- 8.—Notes to be legal tender.
- 9.—Power of Governor in Council to make rules.
- 10.—Power to withhold moneys in certain cases.
- 11.—Unused Notes to be destroyed.

1. It shall be lawful for the Governor in Council to cause to be issued a supply of notes hereinafter called "Cash Notes," for the purpose of making payments in connection with the Road, Marine Works, and Permanent and Casual Poor Services of the Colony, as hereinafter limited and provided.

2. The said notes shall be in forms to be prescribed by the Governor in Council. The said notes shall be payable to bearer on demand. The said notes shall be for the following amounts or values, namely: Twenty-five cents, fifty cents, one dollar, two dollars, and five dollars. The said notes shall bear the lithographed *fac simile* of the signature of the Colonial Secretary and of the Minister of Finance.

3. A supply of said notes equal in their face value to the amount granted by the Legislature to each of the several services indicated in section 1 shall be furnished from the Treasury to the Departments of Marine and Fisheries, Public Works and Public Charities, and the notes so furnished shall be debited against the Board, Commissioners or Relieving Officers, as the case may be, to whom such department shall allocate them, and shall be *pro tanto* a payment and discharge of the said grant or allocation to each Board, Commissioner or Relieving Officer.

4. The chairman of each of the said respective Boards, the said Commissioners, and the said Relieving Officers, respectively, shall issue the said Cash Notes in payment for labor, material, relief of permanent and casual poor, and other obligations incurred by them by reason of their office.

5. A supply of said notes in face value to the amount of any alloca-

tion by the Department of Public Works on account of main lines of roads shall be furnished to the engineer, inspector or commissioner, who may be in charge of any work in constructing, improving or repairing any main line of road or any bridge or other work thereon, and the various provisions contained in the Chapter with respect to such notes, when furnished to a Board of Commissioners on account of local roads, shall apply to such notes when furnished to such engineer, inspector or commissioner on account of main roads.

6. The said Cash Notes shall be payable upon presentation at the Bank named in the said notes, and every note on payment shall be immediately cancelled, and shall, after the lapse of one year from the close of the financial year in which they are issued, be destroyed in the presence of the Auditor General.

7. The sums appropriated by the Legislature to local and main roads, marine works and permanent and casual poor, shall be held and applied to the payment of the said Cash Notes or so many of them as may have been issued to the several Departments referred to in section 3. When any of the said Cash Notes have been furnished by the Treasury Department to any of the said departments on account of the services referred to in section 1, a cheque for the amount so furnished shall forthwith be drawn upon the funds of the department in some bank and the amount of the said cheque shall be forthwith placed by the Finance Minister to the credit of a Cash Note repayment account in some bank. The fund so created shall be a trust fund for the repayment of such Cash Notes and shall be held by the bank for the sole purpose of paying such notes when presented, but interest upon the said fund may be allowed and paid from time to time into the Newfoundland Exchequer Account.

8. The said Cash Notes shall pass current and be a legal tender in currency to the amount of the face values thereof respectively.

9. The Governor in Council shall have power to make rules and regulations for the governance of the Chairman and members of the several Road Boards, Commissioners of Roads, Commissioners of Marine Works, and Relieving Officers of the Colony in relation to the keeping of accounts, directing the making and furnishing of returns and statements relating to the expenditures under such Boards, Commissioners or Relieving Officers, and prescribing the forms of such returns and statements and the manner in which the persons by whom they shall be certified or attested. The Governor in Council shall also have power at any time to direct the Auditor General to examine and audit the books and accounts of any

Board, Commissioner or Relieving Officer, for which purpose the Auditor General shall have the right to require the production of all necessary books, accounts, vouchers, correspondence and papers by the Chairman, Commissioner or Relieving Officer, or any other person having possession or custody thereof, and to require the attendance before him for examination of any person having or supposed to have information relevant to or necessary for such examination or audit.

10. The Governor in Council shall have power to withhold from any Road Board, Road Commissioner, Commissioner of Marine Works or Relieving Officer making default in the furnishing of returns or statements, or whose accounts, returns or statements are incorrect or unsatisfactory, any part or proportion of any legislative vote or appropriation to be expended by or under such official or officials until such returns or statements are made and are found to be correct and satisfactory.

11. The residue of such notes remaining unissued in the Treasury after the several departments shall have been supplied with the quantity required by them shall, at the expiration of each financial year, be checked by the Auditor General and destroyed in his presence.

CHAPTER 199.

Of Money Lenders.

SECTION

- 1.—Short title.
- 2.—Interpretation section.
- 3.—Respecting powers of courts in the case of unconscionable bargains with money-lenders.

SECTION

- 4.—Respecting the registration of money-lenders and penalties.
- 5.—Regulations by Governor in Council.
- 6.—Money-lender making misleading statement liable to indictment.

1. This Chapter may be cited for all purposes as “The Money Lenders Act.”

2. In this Chapter “money lender” includes every person (whether an individual, a firm, a society, or a corporate body) whose business is that of money lending, or who advertises or announces himself or holds himself out in any way as carrying on that business; but does not include any person *bona fide* carrying on the business of banking or insurance or any business in the course of which and for the purpose whereof he lends money at a rate of interest (including any payment or deduction by way of premium, fine, or foregift) not exceeding ten per cent. per annum.

3. (1) Where proceedings are taken in Court by a money lender for the recovery of money lent after the passing of this Chapter or the enforcement of any agreement or security made or taken after the passing of this Chapter, in respect of money lent either before or after the passing of this Chapter, and, it appears to the Court that the interest charged in respect of the sum actually lent is excessive or that the amount charged for expenses, inquiries, fines, bonus, premiums, renewals or any other charges, are excessive, or that, in either case, the transaction is harsh and unconscionable, or is otherwise such that a Court would give equitable relief, the Court may re-open the transaction and take an account between the money-lender and the person sued.

(2) The Court may, notwithstanding any statement or settlement of account or any agreement purporting to close previous dealings and create a new obligation, re-open any account already taken between the money-lender and the person

sued, and relieve the person sued for payment of any sum in excess of the sum adjudged by the Court to be fairly due in respect of such principal, interest and charges as the Court, having regard to the risk and all the circumstances, considers reasonable; and if any such excess has been paid or allowed in account by the debtor, may order the creditor to re-pay it; and may set aside, either wholly or in part, or revise, or alter any security given or agreement made in respect of money lent by the money-lender, and, if the money-lender has parted with the security, may order him to indemnify the borrower or other person sued.

- (3) Any Court in which proceedings might be taken for the recovery of money lent by a money-lender shall have and may, at the instance of the borrower or surety or other person liable, exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent; and the Court shall have power, notwithstanding any provisions or agreement to the contrary, to entertain any application under this Chapter by the borrower, or surety, or other person liable, notwithstanding that the time for repayment of the loan, or any instalment thereof, may not have arrived: provided that a person shall not be entitled to apply to the Court under this sub-section unless application is made within one year of the transaction being closed.
- (4) Where it appears to the Court that any person other than the money-lender shared in the profits of, or has any beneficiary interest, prospectively or otherwise, in the transaction, which the Court holds to be harsh and unconscionable, the Court may cite such person as a party to the cause, and may make such order in respect to such person as it may deem fit.
- (5) On any application relating to the admission or amount of a proof by a money-lender in any insolvency proceedings, the Court may exercise the like powers as may be exercised under this section where proceedings are taken for the recovery of money lent.
- (6) The foregoing provisions of this section shall apply to any transaction which, whatever its form may be, is substantially one of money lending by a money-lender.
- (7) Nothing in this section shall affect the rights of any *bona fide* assignee or holder for value without notice.

- (8) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.
- (9) For the purpose of this section (but for no other purpose) the expression "money-lender" includes any person who lends money for interest at a rate, including any payments or deductions by way of premium, fine or foregift exceeding ten per centum per annum.
4. (1) A money-lender, as defined by Section 2 of this Chapter,—
- (a) Shall register himself as a money-lender, in accordance with regulations under this Chapter, under his own or usual trade name, and no other name, and with the address, or all the addresses, if more than one, at which he carries on his business of money-lender; and
 - (b) Shall carry on the money lending business in his registered name, and in no other name and under no other description, and at his registered address or addresses, and at no other address; and
 - (c) Shall not enter into any agreement in the course of his business as a money lender, with respect to the advance and re-payment of money, or take any security for money otherwise than in his registered name; and
 - (d) Shall, on reasonable request, and on tender of a reasonable sum for expenses, furnish the borrower with a copy of any document relating to the loan, or any security therefor.
- (2) If a money lender fails to register himself as required by this Chapter, or carries on business otherwise than in his registered name, or in more than one name, or elsewhere than at his registered address, or fails to comply with any other requirement of this section, he shall be liable on summary conviction to a penalty not exceeding five hundred dollars, and in the case of a second or subsequent conviction, to imprisonment, with or without hard labor, for a term not exceeding three months, or to a penalty not exceeding five hundred dollars, or to both; provided that if the offender is a body corporate, that body corporate shall be liable on a second or subsequent conviction, to a penalty not exceeding two thousand dollars.

(3) A prosecution under sub-section 2 of this section shall not be instituted except with the consent of the Attorney General.

5. (1) The Governor in Council may from time to time make regulations respecting the registration of money-lenders, whether individuals, firms, societies, or corporate bodies, the form of the register, and the particulars to be entered therein, and the fees to be paid on registration and renewal of registration, not exceeding five dollars for each registration or renewal and respecting the inspection of the register and the fees payable therefor.

(2) The registration shall cease to have effect at the expiration of three years from the date of the registration, but may be renewed from time to time, and, if renewed, shall have effect for three years from the date of the renewal.

6. If any money-lender, or any manager, agent, or clerk of a money-lender, by any false, misleading, or deceptive statement, representation, or promise, or by any dishonest concealment of facts, induces or attempts to induce, any person to borrow money or agree to the terms on which money is, or is to be, borrowed, he shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or to a penalty not exceeding two thousand dollars, or to both.

CHAPTER 200.

Of Hawkers and Pedlars being Foreigners and not
Domiciled in Newfoundland.

SECTION

1.—Foreign pedlars, not domiciled, shall take
licenses.

SECTION

2.—License fee.

1. No pedlar, hawker, or other such person, being a foreigner and not domiciled in this Colony, shall vend goods, wares or merchandise in any part of this Colony or its dependencies without first having received a license from a Stipendiary Magistrate, under a penalty not exceeding one hundred dollars, to be sued for and recovered in a summary manner before any Stipendiary Magistrate or Justice of the Peace, and in default of payment, imprisonment for a term not exceeding one month.

2. The fee for such license shall be fifty dollars, and the terms and conditions thereof shall be determined by the Magistrate or Justice who shall issue such license.

CHAPTER 20I.

Of the Investigation of Combines and Monopolies.

SECTION

1.—Interpretation of terms.

2.—Governor in Council may appoint Commissioners.

SECTION

3.—Powers of Commissioners.

1. In this Chapter, unless the context otherwise requires, "Combine" means any contract, agreement, arrangement, or combination which has, or is designed to have, the effect of increasing, or fixing, the price or rental of any article of trade or commerce, or the cost of the storage or transportation thereof, or of restricting competition in or of controlling the production, manufacturing, storage, sale or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over or obtaining by any person, to the end aforesaid, of any control over, or interest in the business, or any branch of the business, of any other person, and includes what is known as a trust, monopoly or merger.

2. Whenever the Governor in Council deems it expedient to cause enquiry to be made into or concerning any matter of an alleged combine, the Governor may, by Commission, confer upon Commissioners or persons by whom such enquiry is, by the said Commission, to be conducted, the power of summoning before them any party or witness, and of requiring them to give evidence on oath, orally or in writing, and to produce such documents or things as such Commissioners may require in the investigation of the matters into which they are appointed to examine.

3. The said Commissioners shall have the same power to enforce the attendance of witnesses and to compel them to give evidence, as is vested in any court of law in civil cases and any wilfully false statement made by any such witness on oath or affirmation shall be a misdemeanour punishable in the same manner as wilful perjury. But the witness or party shall not be compelled to answer any question by his answer to which he might render himself liable to a criminal prosecution.

CHAPTER 202.

Of the Inspection of Boilers.

SECTION

- 1.—Appointment of Inspector and Assistant Inspector.
- 2.—Inspectors to be under Minister of Marine and Fisheries.
- 3.—Oath of office.
- 4.—Governor in Council may make regulations.
- 5.—Governor in Council may require reports, &c.
- 6.—Powers of Inspectors.
- 7.—Obstructing Inspectors; penalty.
- 8.—Use of uninspected boilers; penalty.
- 9.—Certificate of inspection.

SECTION

- 10.—Inspector to be notified before expiry of certificate.
- 11.—Cases where inspection dispensed with.
- 12.—Condemnation of unsafe boilers; penalty for using.
- 13.—Use of boilers whose certificate has expired, &c.; penalty.
- 14.—Notification of Inspector as to defects; penalty for omission.
- 15.—Stamp duties.
- 16.—Procedure for penalties.
- 17.—Appeal from Inspector's decision.

1. The Governor in Council may appoint two fit and competent persons (in this Chapter called "the Inspector," and "the Assistant Inspector"), whose duty it shall be, as often as may be prescribed, to inspect and report upon the state and condition of every marine, factory, foundry, machine-shop, locomotive or other boiler in use in any port or place in this Colony which the Governor in Council may prescribe, and the said inspectors shall hold office during pleasure.

2. Subject as herein provided the inspectors shall be under the control of the Minister of Marine and Fisheries and the Assistant Inspector shall in all cases exercise his powers under the direction of the Inspector.

3. The Inspector and Assistant Inspector, shall before acting take and subscribe before a Justice of the Peace an oath of office in the form, or to the effect following:

I, A. B., do solemnly swear, that I will faithfully, truly and impartially, to the best of my judgment, skill and understanding, execute and perform the office of Inspector under Chapter 202 of the Consolidated Statutes (Third Series) entitled "Of the Inspection of Boilers," and the rules thereunder. So help me God.

4. The Governor in Council may from time to time make such regulations for the guidance and government of the Inspector, and of persons employing him as such, as may be considered proper, and may prescribe the amount of the fees payable by the owner or owners of boilers for inspection, and generally provide for efficient inspection under this Chap-

ter, and for the purpose of carrying the object and provisions of this Chapter into effect, and may by such regulations impose penalties not exceeding fifty dollars on any person offending against them; and such regulations and the penalties therein contained shall be published in the *Royal Gazette* and one other newspaper, and shall thereupon take effect and be deemed and taken to be part and parcel of this Chapter as if specially enacted therein.

5. The Governor in Council may from time to time require the Inspector or Assistant Inspector to make returns or reports of his official acts to any other public department or officer, board of trade, chamber of commerce or municipal authority, in such form and containing such particulars and information as may be deemed expedient.

6. The Inspector and Assistant Inspector shall have power from time to time—

- (1) To go on board any ship, or to enter any factory, machine-shop, foundry or other place where any boiler may be, and inspect the same or any part thereof, not unnecessarily interfering with the progress of any work, or detaining or delaying any ship from proceeding on her voyage, and to order the stoppage of any engine or machinery and the drawing of the fires from any furnace or boiler, or to do any act or thing, or give such order, or make such demand as he may consider necessary to enable him to efficiently inspect any such boiler;
- (2) To enter or inspect any premises, the entry or inspection of which appears to him to be requisite for the purpose of the report which he is herein directed to make.

7. If any person wilfully impedes the Inspector or Assistant Inspector in the execution of his duty, whether on board a ship or elsewhere, or refuses to obey any reasonable and lawful order or demand under the preceding section, that person shall for each offence be liable to a fine not exceeding fifty dollars, and may be seized and detained by the Inspector, or by any person or persons whom the Inspector may call to his assistance, until he can be conveniently taken before some Justice of the Peace or Stipendiary Magistrate.

8. If the owner of any boiler shall use or work or permit the using or working of the same before a certificate of inspection properly signed shall have been delivered to him the said owner shall be liable to a pen-

alty not exceeding one hundred dollars for every day or part of a day during which such boiler shall have been used or worked.

9. If after having inspected any boiler the Inspector or Assistant Inspector finds that the same may be safely used or worked, and that no risk or danger to life may result from such use or working, he shall grant a certificate in the form or to the effect following:

NEWFOUNDLAND.

Consolidated Statutes (Third Series) 202, entitled "Of the Inspection of Boilers."

Having inspected and examined the (here describe the boiler inspected by some distinguishing description or mark) on the premises (or on board the steamship), owned (or occupied) by (ormaster), I find the said (here describe the boiler inspected by some distinguishing description or mark) to be in good order, and I do certify that the same may be used without risk of accident or danger to life for a period of

..... Inspector.

10. It shall be the duty of every person to whom a certificate is granted under this Chapter not less than fourteen days before the expiration of the time for which the certificate is granted to notify the Inspector or Assistant, of the expiry of the certificate and the date thereof, under a penalty of ten dollars for every day's neglect or failure to give such notice.

11. The Governor in Council shall have power to dispense with the inspection required by this Chapter in any of the following cases, viz.:

- (1) Upon the production of a certificate of inspection of any ship's boiler granted by a public authority in any country or colony in which the certificate of the Inspector is accepted in lieu of survey or inspection of ship's boilers in such country or colony;
- (2) In any other case in which a certificate of inspection satisfactory to the Governor in Council is produced.

12. If the Inspector or Assistant Inspector having inspected any boilers should find the same in his opinion to be unfit for use, unsafe or dangerous to life, he shall immediately give notice in writing to the own-

er or person in charge thereof to immediately cease the use or working of such boiler, and may thereupon condemn the same as unfit for further use, or may order such repairs as he may consider necessary; and in case of repairs being ordered, such boiler shall before being again used or worked be submitted to the Inspector for his approval; and if after notice shall have been received as aforesaid from the Inspector or Assistant Inspector, or after repairs shall have been ordered to be erected on any boiler, the same shall be used or worked without having been approved by the Inspector or Assistant Inspector, or if after any boiler shall have been condemned, the same shall be used or worked, the owner thereof shall be liable for every day or part of day wherein the same shall have been used or worked to a penalty of one hundred dollars.

13. If after a certificate shall have been once granted in respect of any boiler, it shall have been cancelled by the Inspector or Assistant Inspector, or shall have expired, and no new certificate shall have been granted, and such boiler shall be used or worked, or the use or working thereof shall be continued, the owner of such boiler shall be liable to the penalty provided in section twelve of this Chapter for every day or part of a day during which such boiler shall have been used or worked.

14. If the owner or person in charge of any boiler shall have reason to believe that any defect exists in such boiler, so that risk of injury or danger to life may be incurred by the continued use or working of the same, it shall be the duty of such owner or person to immediately cease the use or working of such boiler, and to notify the Inspector or Assistant Inspector of his belief in the existence of such defect, and for every day he shall use such boiler, or shall neglect so to notify the Inspector or Assistant Inspector of his belief in the existence of such defect, he shall be liable to a penalty of one hundred dollars.

15. The Provisions of Chapter 24 of these Consolidated Statutes entitled "Of the Payment of Certain Fees and Charges by Stamps," shall apply to the certificate of inspection required by this Chapter.

16. All penalties and forfeitures prescribed by this Chapter, or any of the rules and regulations made thereunder, may be sued for and recovered in a summary manner before any Stipendiary Magistrate or Justice of the Peace.

17. (1) If any dispute arises between the Inspector or Assistant Inspector and the owner or possessor of any boiler with regard to the quality or condition thereof, or relating thereto, a Stipendiary Magistrate upon application to him by either

of the parties to the dispute shall issue an order to three persons of skill and integrity requiring them forthwith to examine such boiler, and report their opinion of the quality or condition thereof under oath to him (which oaths he is hereby empowered to administer), and their determination or that of the majority of them expressed in writing shall be final and conclusive.

- (2) One of such persons shall be named by the Inspector or Assistant Inspector, another by the owner or possessor of the boiler in question, and the third by the Stipendiary Magistrate, who, failing the attendance of either of the parties to the dispute, shall name a person for him.

CHAPTER 203.

Of Express Companies.

SECTION
1.—Interpretation section.

SECTION
2.—Express Companies shall file annual statements.

1. In this Chapter "Company" means every person or body of persons corporate or unincorporate carrying on the business of an Express Company or Express Agents in the Colony, and shall include every company whose business embraces that of an Express Company.

2. Every company shall, on or before the 31st day of January in each year, furnish to the Minister of Finance and Customs, a statement of its affairs made up to the 31st day of December of the preceding year, and as nearly as possible according to the form of the Schedule hereto, and in default, shall be liable to a penalty of ten dollars for every day after said date during which such default continues.

SCHEDULE.

1. Number and amount of Money Orders issued during year.
2. Number and amount of Money Orders sent out of Colony during year.
3. Number and amount of Money Orders received from abroad during year (showing number and amount from each country.)
4. Number of packages expressed within Colony during year.
5. Number of packages sent out of Colony during year.
6. Number of packages received from abroad during year (showing number from each country.)

CHAPTER 204.

Of the Protection of Partridge Berries.

SECTION

- 1.—Close time for taking, etc., partridge berries.
2.—Penalty.

SECTION

- 3.—Governor in Council may make regulations for inspection of partridge berries.

1. No person shall take, pick, sell or have in his possession, any partridge berries, between the first day of August and a date to be fixed by notice in the *Royal Gazette* by the Minister of Agriculture and Mines, which last mentioned date shall be between September 5th and September 15th in every year, and which notice, in addition to publication as aforesaid, shall be posted up in some conspicuous place in such settlements in the Colony as may be decided upon by the Minister.

2. Any person violating any of the provisions of this Chapter shall be liable to a penalty not exceeding twenty dollars, to be recovered in a summary manner before a Stipendiary Magistrate or Justice of the Peace.

3. It shall be lawful for the Governor in Council to make rules and regulations, and provide penalties for breaches of the same, regulating the inspection of partridge berries. Such rules and regulations, when published in the *Royal Gazette*, shall have the force and effect of law.

CHAPTER 205.

Of the Encouragement of Woollen Manufactures

SECTION

- 1.—Respecting a premium on raw wool imported
- 2.—Respecting a premium on wool raised in Colony.
- 3.—Exemption of machinery from duty.

SECTION

- 4.—Respecting payment of premium.
- 5.—Power of Governor in Council to enter into agreement.
- 6.—Duration of Chapter.

1. There shall be granted a premium upon all raw wool imported into this Colony and its Dependencies for the purpose of manufacturing wearing apparel, blankets, rugs, carpets or other like manufactures to be computed at the rate of five per cent. upon the original cost of such wool, at the place where the same shall be shipped for importation.

2. There shall be granted a premium upon all wool raised in this Colony and manufactured into wearing apparel, blankets, rugs, carpets or other like manufactures, in factories or buildings where more than ten persons are annually employed, to be computed at the rate of five per cent. upon the value of such wool. The value of such wool upon which the said bounty shall be paid shall be fixed from time to time by the Governor in Council.

3. All machinery imported into this Colony except such as can be manufactured in this Colony, for the manufacture of the aforesaid woollen goods, shall be exempted from the payment of duty.

4. The premium hereby granted shall be paid to the manufacturer upon the production of a satisfactory affidavit setting forth that the wool so imported has been used in the aforesaid manufactures.

5. It shall be lawful for the Governor in Council to enter into an agreement, on behalf of the Colony, for any number of years not exceeding ten, with any person or corporation prepared to engage in the manufacture of woollens in this country and to guarantee, on behalf of the Colony, that the premium referred to herein shall continue in force for a period of ten years, and that during the said period, the present duty payable on all woollens imported into this country shall not be reduced.

6. This Chapter shall continue and be in force for the period of ten years from the first day of July A. D. one thousand nine hundred and ten.

TITLE XXVIII.

OF RAILWAYS.

CHAPTER 206.

Of Railways and Railway Companies

SECTION

- 1.—Chapter to be of general application.
- 2.—Meaning of term "Company."
- 3.—Notices before railways are opened for conveyance of passengers.
- 4.—Penalty.
- 5.—Examination of Government Engineer.
- 6.—Penalty.
- 7.—Copy of Engineer's report to be furnished Railway Company.
- 8.—Governor in Council to order inspection at any time.
- 9.—Government may forbid running of trains when considered dangerous.
- 10.—Engineer to report forthwith.
- 11.—Engineer to have power to enter upon and examine railways.
- 12.—Rights and privileges of inspecting engineers.
- 13.—Powers of Governor in Council or inspecting Engineer to regulate trains, etc.
- 14.—Railway Company to notify Government of accidents.
- 15.—Government Engineer to make special report of accident.
- 16.—Railway companies to make arrangements for interchange of traffic, &c.
- 17.—Liberty of railway companies as carriers.
- 18.—Railway Company to make bye-laws, &c.

SECTION

- 19.—Railway Company may impose forfeiture upon their officers.
- 20.—Proof of notice of bye-laws, &c.
- 21.—Proof thereof as a defence for Company.
- 22.—Company not to impede navigation.
- 23.—Railway Company to have passenger train properly equipped and provided.
- 24.—Penalty.
- 25.—Officers to be stationed at crossings.
- 26.—Locomotive to stop before crossing train or other railway.
- 27.—Speed of locomotive in passing through towns.
- 28.—Warning to parties when train moving reversely.
- 29.—Penalty for obstructing Engineer.
- 30.—Penalty for obstructing, &c., railway officials.
- 31.—Miscellaneous regulations.
- 32.—Interpretation.
- 33.—Hours of labour of railway servants.
- 34.—Penalty for violation of regulations by servants of company where injury incurred.
- 35.—Penalty where no injury incurred.
- 36.—Penalty, how shared.
- 37.—Company may pay penalty and recover same from offender.

1. The provisions of this Chapter shall apply to all railways which have been, or which may hereafter be constructed under the authority of any special act, passed by the Legislature of this Colony, and to all companies which have been, or may hereafter be formed or incorporated for their construction and working.

2. In this Chapter the term "Company" means a company incorporated either before or after the passing of this Chapter, for the purpose of constructing, maintaining or working a railway in this Colony, and includes any individual or individuals not incorporated who are owners or lessees of a railway in the Colony, or parties to an agreement for working a railway in the Colony.

3. No railway, or portion of any railway, shall be opened for the

public conveyance of passengers until one month after notice in writing of the intention to open the same has been given by the company to whom the railway belongs to the Governor in Council, and until ten days after notice in writing has been given by the company to the Governor in Council, of the time when the railway or portion of railway will be, in the opinion of the company, sufficiently complete for the safe conveyance of passengers and ready for inspection.

4. If any railway, or portion of a railway, be opened without such notices, the company to whom such railway belongs shall forfeit to His Majesty the sum of two hundred dollars for every day during which the same continues open, until the notices have been duly given and have expired.

5. The Governor in Council, upon receiving such notification, shall direct the Government Engineer, with or without other competent engineers, to examine the railway proposed to be opened, and all bridges, culverts, tunnels, road-crossings, and other works and appliances connected therewith, and also engines and other rolling stock, intended to be used thereon; and if the inspecting engineer or engineers report, in writing, to the Governor in Council, that in his or their opinion the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the equipment for working such railway, together with the ground of such opinion, the Governor in Council, thereupon and so from time to time as often as such engineer or engineers, after further inspection thereof, so report, may order and direct the company to whom the railway belongs to postpone such opening, not exceeding one month at any one time, until it appears to the Governor in Council, that such opening may take place without danger to the public.

6. If any railway or any portion thereof be opened contrary to such order or direction of the Governor in Council, the company to whom the railway belongs shall forfeit to His Majesty the sum of two hundred dollars for every day during which the same continues open contrary to such order or direction.

7. No such order shall be binding upon any railway company unless therewith is delivered to the company a copy of the report of the inspecting engineer or engineers on which the order is founded.

8. The Governor in Council, whenever he receives information to

the effect that any bridge, culvert, viaduct, tunnel, or any portion of any railway, or any engine, cars or carriage, used or for any use on any railway, is dangerous to the public using the same from want of repair, insufficient or erroneous construction or from any other cause, or whenever circumstances may arise which, in his opinion, render it expedient, may direct any engineer or engineers, as aforesaid, to examine and inspect the railway or any portion thereof, or the works connected therewith, or the engines and other rolling stock in use thereon or any portion thereof, and upon the report of the engineer or engineers, may condemn the railway or any portion thereof, or any of the rolling stock or other appliances used thereon, and may require any change or alteration therein or in any part thereon, or the substitution of any new bridge, culvert, viaduct or tunnel, or of any material for the said railway, and thereupon the company to which such railway belongs, or the company using, running or controlling the same shall, after notice thereof in writing, signed by the Colonial Secretary, proceed to make good or remedy the defects in the said portions of the railway, or in the locomotive, car or carriage which have been so condemned, or shall make such change, alteration or substitution hereinbefore referred to as has been required in manner aforesaid by the Governor in Council.

9. If in the opinion of any such engineer it is dangerous for trains or vehicles to pass over any railway or any portion thereof until alterations, substitutions or repairs have been made thereon, or that any particular car, carriage or locomotive should be run or used, the said engineer may forthwith forbid the running of any train or vehicle over such railway or portion of railway, or the running or using of any such car, carriage or locomotive, by delivering or causing to be delivered to the president, managing director or secretary or superintendent of the company, owning, running or using such railway, or to any officer having the management or control of the running of trains on such railway, a notice in writing to that effect, with his reason therefor, in which he shall distinctly point out the defects or the nature of the danger to be apprehended.

10. The inspecting engineer shall forthwith report the same to the Governor in Council, who after full enquiry may either confirm, modify, or disallow the act or order of the inspecting engineer, and such confirmation, modification or disallowance shall be duly notified to the railway company affected thereby.

11. Any engineer or engineers so appointed, as aforesaid, to inspect any railway or works, may, at all reasonable times, upon producing his or their authority if required, enter upon and examine the said rail-

way, and the stations, fences or gates, road-crossings, cattle guards, works and buildings, and the engines, cars and carriages belonging thereto.

12. Every railway company, and the officers and directors thereof, shall afford to the inspecting engineer or engineers such information as may be within their knowledge and power, in all matters inquired into by them, and shall submit to such inspecting engineer or engineers, all plans, specifications, drawings and documents relating to the construction, repair, or state of repair of such railway, or any portion thereof, whether a bridge, culvert or other part.

- (1) Any such inspecting engineer shall have the right, whilst engaged in the business of such inspection, to travel without charge on any of the ordinary trains running on the railway and to use the telegraph wires and machinery in the offices of or under the control of any such railway company.
- (2) The operators or officers employed in the telegraph offices of or under the control of the company shall, without unnecessary delay, obey all orders of any such inspecting engineer for transmitting messages and any such operator or officer refusing or neglecting so to do, shall forfeit for every such offence the sum of forty dollars.
- (3) The authority of any such inspecting engineer shall be sufficiently evidenced by instructions in writing, signed by the Colonial Secretary

13. The Governor in Council, or the inspecting engineer or engineers, may limit the number of times or rate of speed of running of trains or vehicles upon any railway or portion of railway, until such alterations or repairs as he or they may think sufficient have been made, or until such time as he or they may think prudent; and the company owning, running or using such railway shall comply forthwith with any such order of the Governor in Council or inspecting engineer, upon notice thereof as aforesaid, and for every act of non-compliance therewith, every such railway company shall forfeit to His Majesty the sum of two thousand dollars.

14. Every railway company shall, as soon as possible after, and at least within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury to any person using the same, or whereby any bridge, culvert, viaduct or tunnel on or of the railway has been broken, or so damaged as to be im-

passable or unfit for immediate use, give notice thereof to the Governor in Council, and if any company wilfully omits to give such notice, such company shall forfeit to His Majesty the sum of two hundred dollars for every day during which the omission to give the same continues.

15. The Colonial Secretary may at any time direct the Government Engineer to make a special report with respect to any accident on the railway, which accident has caused loss of life or personal injury to any person, and in such case the Government Engineer shall have power to hold an investigation, of which investigation reasonable notice shall be given to the company, and to summon and examine such witnesses as he may consider necessary, under oath, and the Colonial Secretary shall cause such report to be made public at such time and in such manner as he thinks expedient.

16. The directors of any railway company may, at any time, make agreements or arrangements with any other company or owners of railways for the regulation and interchange of traffic passing to and from their railways and for the working of the traffic over the said railways respectively, or for either of those objects separately, and for the division and apportionment of tolls, rates and charges in respect of such traffic, and generally in relation to the management and working of the railways, or any of them, or any part thereof, and of any railway or railways in connection therewith, for any term not exceeding twenty-one years, and to provide either by proxy or otherwise, for the appointment of a joint committee or committees for the better carrying into effect any such agreement or arrangement, with such powers and functions as may be considered necessary or expedient, subject to the consent of two-thirds of the stock-holders voting in person or by proxy.

- (1) But every railway company shall, according to their respective powers afford all reasonable facilities to any other railway company for the receiving and forwarding and delivering of traffic upon and from the several railways belonging to or worked by such companies respectively, and for the return of carriages, trucks and other vehicles, and no company shall give or continue any preference or advantage to or in favour of any particular company, or any particular description of traffic, in any respect whatsoever, nor shall any company subject any particular company, or any particular description of traffic, to any prejudice or disadvantage in any respect whatsoever, and every railway com-

pany having or working a railway, which forms part of a continuous line of railway or railway and steamer connection, or which intersects any other railway, or which has any terminus, station or wharf of the one near any terminus, station or wharf of the other, shall afford all reasonable facilities for receiving and forwarding by the one railway, all the traffic arriving by the other, without any unreasonable delay, and without any preference or advantage or prejudice or disadvantage, and so that no obstruction may be offered in the using of such railway as a continuous line of communication, and so that all reasonable accommodation may at all times, by the means aforesaid, be mutually afforded by and to the said railway companies, and any agreement made between any two or more railway companies contrary to the foregoing provisions shall be unlawful, null and void.

- (2) Any railway company granting any facilities to any incorporated express company, shall grant equal facilities on equal terms and conditions, to any other incorporated express company demanding the same.
- (3) If any officer, servant or agent of any railway company, having the superintendence of the traffic at any station or depot thereof, refuses, or neglects to receive, convey or deliver at any station or depot of the company for which they may be destined, any passenger, goods or things brought, conveyed or delivered to him or to such company for conveyance over or along their railway, from that of any other company, intersecting, or coming near to such first mentioned railway, or in any way wilfully contravenes the provisions of the second sub-section of this section, such first mentioned railway company, or such officer, servant or agent personally shall for each such neglect or refusal incur a penalty not exceeding fifty dollars, over and above the actual damages sustained; which penalty may be recovered, with costs, in a summary way before any Justice of the Peace by the railway company or any other party aggrieved by such neglect or refusal, and to and for the use and benefit of the company or other party so aggrieved.
- (4) For the purpose of this section and the three next preceding sub-sections, the word "traffic" includes not only passengers and

their baggage, goods, animals and things conveyed by railway, but also cars, trucks and vehicles of any description, adapted for running over any railway; the word "railway" includes all stations and depots of the railway and steamers connected therewith; and a railway shall be deemed to come near another when some part of the one is within one mile of some part of the other.

- (5) Whenever any railway company is permitted by the Act of Incorporation of such company, to amalgamate, by arrangement, with any other company, the contract for such amalgamation shall, when adopted and passed by such companies, be communicated to the Governor in Council, for approval, and such approval shall be announced by notice under the signature of the Colonial Secretary in the *Royal Gazette*.

- (6) In the event of two or more companies failing to make the traffic arrangements required by this Chapter, such companies may be required by the Governor in Council, to make such arrangements within a specified reasonable time, and if the companies fail to agree as to the terms of such arrangements within the term so specified, then the Governor in Council shall have the power to adjust, decide and settle all disputes in relation thereto.

17. Every company shall be liable for the loss of or for any injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding or delivering thereof, occasioned by the neglect or default of such company or its servants, notwithstanding any notice, condition, or declaration made and given by such company contrary thereto, or in anywise limiting such liability, every such notice, condition, or declaration being hereby declared to be null and void: Provided always, that nothing herein contained shall be construed to prevent the said companies from making such conditions with respect to the receiving, forwarding and delivering of any of the said animals, articles, goods, or things, as shall be adjudged by the Court or Judge before whom any question relating thereto shall be tried, to be just and reasonable: Provided always, that no greater damage shall be recovered for the loss of or for any injury done to any such animals, beyond the sums hereinafter mentioned, that is to say: for any horse, two hundred dollars; for any neat cattle, per head, eighty dollars; for any sheep or pigs, per head, eight dollars; unless the person sending or delivering the same to such Company shall, at

the time of such delivery, have declared them to be respectively of higher value than as above mentioned, in which case it shall be lawful for such company to demand and receive by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage upon the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid, in addition to the ordinary rate of charge: Provided also, that the proof of the value of such animals, articles, goods and things, and the amount of the injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury: Provided also that no special contract between such company and any other parties respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things, as aforesaid, shall be binding upon or affect any such party unless the same be signed by him or by the person delivering such animals, articles, goods or things respectively for carriage.

18. Every railway company shall make bye-laws, rules and regulations to be observed by the conductors, engine drivers and other officers and servants of the company, and by all other companies and persons using the railway of such company, and such regulations with regard to the construction of the carriages and other vehicles to be used in the trains on the railway of the company, as are requisite for ensuring the perfect carrying into effect of the provisions of this Chapter, and the orders and regulations of the Governor in Council.

19. Any railway company may, by a bye-law, impose upon any officer, servant or person who before the contravention of such bye-law, has had notice thereof, and is employed by the company, forfeiture to the company of not less than thirty days pay of such officer or servant, for any contravention of such bye-law, and may retain any such forfeiture out of the salary or wages of the offender.

20. The notice of the bye-law, or of any order or notice of the Governor in Council, or of the inspecting engineer or engineers, may be proved by proving the delivery of a copy thereof to the officer, servant or person, or that he signed a copy thereof, or that a copy thereof was posted in some place where his work or his duties or some of them were to be performed.

21. Such proof, with a proof of the contravention, shall be a full answer and defence for the company, in any suit for the recovery of the amount so retained, and such forfeiture shall be over and above any penalty under this Chapter.

22. No such company shall cause any obstruction in or impede the free navigation of any river, stream or canal, to or across or along which the railway is carried.

23. Every railway company which runs trains upon the railway for the conveyance of passengers shall provide and cause to be used in and upon such trains, such known apparatus and arrangements as best afford good and sufficient means of immediate communication between the conductors and the engine-drivers of such trains, while the trains are in motion, and good and sufficient means of applying by the power of the steam-engine, or otherwise, at the will of the engine-driver or other person appointed to such duty, the brakes to the wheels of the locomotive or tender, or both, or of all or any of the cars or carriages composing the trains, and of disconnecting the locomotive, tender, and cars or carriages from each other by any such power or means, and also such apparatus and arrangements as shall best and most securely place and fix the seats or chairs in the cars or carriages, and shall alter such apparatus and arrangements, or supply new apparatus and arrangements, from time to time, as the Governor in Council may order.

24. Every railway company which fails to comply with any of the provisions contained in the next preceding section of this Chapter shall forfeit to His Majesty a sum not exceeding two hundred dollars for every day during which such default continues.

25. Every railway company shall station an officer at every point on their line crossed on a level by any other railway, and no train shall proceed over such crossing until signal has been made to the conductor thereof that the way is clear.

26. Every locomotive or railway engine, or train of cars, on any railway shall, before it crosses the track of any other railway on a level, be stopped for at least the space of one minute.

27. No locomotive or railway engine shall pass in or through any thickly peopled portion of any city, town or village, at a speed greater than six miles per hour, unless the track is properly fenced.

28. Whenever any train of cars is moving reversely in any city, town or village, the locomotive being in the rear, the company shall station on the last car in the train a person, who shall warn parties standing on, or crossing the track of railway, of the approach of such train, and for any contravention of the provisions of this and the three next pre-

ceding sections, the company shall incur a penalty of one hundred dollars.

29. Every person wilfully obstructing any inspecting engineer in the execution of his duty, shall, on conviction before a Justice of the Peace having jurisdiction in the place where the offence has been committed, forfeit and pay for every such offence a sum not exceeding forty dollars, and in default of payment of any penalty so adjudged, immediately or within such time as the said Justice of the Peace appoints, the same Justice or any other Justice having jurisdiction in the place where the offender resides, may commit the offender to prison for any period not exceeding three months; but such commitment shall be determined on payment of the amount of the penalty.

30. Any person who—

- (1) Obstructs any officer or servant employed on any railway in the performance by such officer or servant of his duty; or
- (2) Behaves in a violent or offensive manner to the annoyance of others, or is drunk on any railway; or
- (3) Trespasses upon any railway and refuses to quit the same upon request to him made by any officer or servant of the railway.

shall be liable, on conviction before a Justice of the Peace, upon the complaint of any person, to a penalty not exceeding twenty dollars, or in default of payment to imprisonment not exceeding one month.

31. Every servant of the company employed in a passenger train or at a station for passengers, shall wear upon his hat or cap a badge which shall indicate his office, and he shall not, without such badge, be entitled to demand or receive from any passenger any fare or ticket, or to exercise any of the powers of his office, or to interfere with any passenger or his baggage or property.

- (1) The trains shall be started and run at regular hours to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and goods as are within a reasonable time previous thereto offered for transportation at the place of starting, and at the junction of other railways, and at usual stopping places established for receiving and discharging way passengers and goods from the trains.

- (2) Such passengers and goods shall be taken, transported, and dis-

charged at, from, and to such places, on due payment of toll, freight, or fare legally authorized therefor.

- (3) The party aggrieved by any neglect or refusal in the premises shall have an action therefor against the company; from which action the company shall not be relieved by any notice, condition or declaration, if the damage arises from any negligence or omission of the company or of its servants.
- (4) The baggage, freight, merchandize, or lumber cars shall not be placed in rear of the passenger cars, and if any such be so placed, the officer or agent directing or knowingly suffering such arrangement, and the conductor of the train, shall severally be guilty of a misdemeanor and be punished accordingly.
- (5) Every locomotive engine shall be furnished with a bell of at least thirty pounds weight, and with a steam whistle.
- (6) The bell shall be rung, or the whistle sounded at the distance of at least eighty rods from every place where the railway crosses any highway, and be kept ringing or be sounded at short intervals until the engine has crossed such highway, under a penalty of eight dollars for every neglect thereof, to be paid by the company, who shall also be liable for all damages sustained by any person by reason of such neglect, and one-half of such penalty and damages shall be chargeable to and collected by the company from the engineer having charge of such engine and neglecting to sound the whistle or ring the bell as aforesaid.
- (7) Any person in charge of a locomotive engine, or acting as the conductor of a car or train of cars, who is intoxicated, shall be guilty of a misdemeanor.
- (8) Any passenger refusing to produce his ticket, when so requested, or to pay his fare, may, by the conductor of the train, and the servants of the company, be put out of the train, with his baggage, at any usual stopping place, or near any dwelling-house, as the conductor elects, the conductor first stopping the train and not using any unnecessary force.
- (9) Any person injured while on the platform of a car, or on any

baggage, wood or freight car, in violation of the printed regulations posted up at the time in a conspicuous place inside of the passenger cars, then in the train, shall have no claim for the injury, provided room inside of such passenger cars, sufficient for the proper accommodation of the passengers, was furnished at the time.

- (10) No passenger shall be entitled to carry, or require the company to carry, upon their railway, aquafortis, oil of vitriol, gunpowder, nitro-glycerine, or any other goods, which in the judgment of the company may be of a dangerous nature; and if any person sends, by the said railway, any such goods, without, at the time of so sending the said goods, distinctly marking their nature on the outside of the package containing the same, and otherwise giving notice in writing to the station-master or other servant of the company, with whom the same are left, he shall forfeit to the company the sum of five hundred dollars, for every such offence.
- (11) The company may refuse to take any package or parcel which they suspect to contain goods of a dangerous nature, or may require the same to be opened to ascertain the fact.
- (12) Any person who boards a train when drunk may be at once put out by the conductor or train servants before the train moves, and any person being drunk upon any railway train or behaving in a violent and offensive manner to the annoyance of others, may be put out of the train with his baggage at any station, the conductor first stopping the train and not using any unnecessary force; provided that any passenger so put out may, on presenting himself, within forty-eight hours after being so put out, at any of the trains of the company from whose train he has been put out, resume his journey without any additional charge.
- (13) It shall be lawful for the conductor on any railway to take and destroy any intoxicating liquor in the possession of any passenger who is drunk or drinking to excess or supplying liquors to other persons on the train.
- (14) It shall be lawful for any officer or servant of a railway to remove from a railway any person who is trespassing thereon and who refuses to quit upon request, and it shall be the

duty of every police constable, upon the request of any such officer or servant, to remove any person so trespassing and refusing to quit.

- (15) No railway company or other person shall sell or deliver to any person apparently under the influence of liquor any ticket to travel on any of its trains under a penalty of twenty dollars for each offence, to be recovered in a summary manner.

32. In the two preceding sections the word "railway" shall include the land on which the railway is made and all buildings and erections thereon, and all stations, premises, wharves and works used in connection with the railway, and all railway engines, cars and carriages.

- 33.** (1) If it is represented to the Government Engineer by or on behalf of the servants or any class of the servants of a railway company or company operating any railway in this Colony that the hours of labor of those servants or of that class, or, in any special case, of any particular servants engaged in working the traffic on any part of the lines of such company are excessive, or do not provide sufficient intervals of uninterrupted rest between the periods of duty or sufficient relief in respect of Sunday duty, the Government Engineer shall enquire into the representation.

- (2) If it appears to the Government Engineer, either on such representation or otherwise, that there is in the case of any railway company reasonable ground of complaint with respect to any of the matters aforesaid, the Government Engineer shall order the company to submit to him within a period specified such a schedule of time for the duty of the servants or of any class of the servants of the company as will in the opinion of the Government Engineer bring the actual hours of work within reasonable limits, regard being had to all the circumstances of the traffic and to the nature of the work.

- (3) If any such company fail to comply with any such order or to enforce the provisions of any schedule submitted to the Government Engineer and approved by him, the Government Engineer may refer the same to the Governor in Council, and the Governor in Council may make an order requiring

the company to submit to the Governor in Council within a period specified, such schedule as will, in the opinion of the Governor in Council, bring the actual hours of work within reasonable limits.

- (4) If any such company fail to comply with any order made by the Governor in Council in pursuance of this section, or to enforce the provisions of any schedule submitted to the Governor in Council, and approved by him, the company shall be liable to a fine not exceeding one hundred dollars for every day such default continues. Such fine shall be recoverable by an action in the name of the Minister of Justice in any court of competent jurisdiction.

- (5) This section shall apply to the following servants only, namely: engineers or locomotive drivers, firemen, conductors, brakemen, signalmen, and telegraph operators.

34. If any officer or servant of, or person employed by any railway company, wilfully or negligently contravenes any bye-law or regulation of the company, lawfully made and in force, or any order or notice of the Governor in Council or of the inspecting engineer or engineers, of which a copy has been delivered to him, or has been posted up or open to his inspection in some place where his work or his duties, or any of them, are to be performed, then if such contravention causes injury to any property, or to any person, or exposes any property or any person to the risk of injury, or renders such risk greater than it would have been without such contravention, although no actual injury occurs, such person if convicted thereof, shall in the discretion of the Court before whom the conviction is had, be punished by fine not exceeding four hundred dollars, and in default of payment of the fine, to be imprisoned for a term not to exceed two years.

35. If such contravention does not cause injury to any property or person, nor expose any person or property to the risk of injury, or renders such risk greater than it would have been without such contravention, then the officer, servant or other person guilty thereof, shall thereby incur a penalty not exceeding the amount of thirty days' pay, nor less than fifteen days' pay of the offender, from the company, in the discretion of the Justice of the Peace before whom the conviction is had; and such penalty shall be recoverable with costs before any one Justice of the Peace having jurisdiction where the offence has been committed, or where the of-

fender is found, on the oath of one credible witness other than the informer.

36. One moiety of such penalty shall belong to His Majesty for the public uses of the Colony, and the other moiety to the informer, unless he be an officer or servant of, or person in the employ of the company, in which case he shall be a competent witness, and the whole penalty shall belong to His Majesty for the use aforesaid.

37. The company may, in all cases, under the three next preceding sections, pay the amount of the penalty and costs and recover the same from the offender, or deduct it from his salary or pay.

CHAPTER 207.

Of Injuries to Railway Trains.

SECTION

- 1.—Injuries, &c., to railway trains; punishment.
- 2.—Magistrate to forward complaint to Attorney General.

SECTION

- 3.—Appeal.
- 4.—Bail pending appeal.

1. Whosoever shall,—

- (1) Unlawfully and maliciously put, place, cast, or throw upon or across any railway, any wood, stone or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any point or other machinery belonging to any railway, or shall unlawfully and maliciously make or show, hide or remove any signal or light upon or near to any railway, or shall unlawfully and maliciously do or cause to be done, or assist in doing or causing to be done, any other matter or thing, or shall unlawfully and maliciously, by any overt act, attempt to do any matter or thing with intent in any of the cases aforesaid, to obstruct, upset, overthrow, injure or destroy any engine, tender, carriage or truck, using such railway; or,—
- (2) Shall by any unlawful act, or by any wilful omission or neglect, obstruct or cause to be obstructed, any engine or carriage using any railway, or shall aid or assist therein; or,—
- (3) Shall unlawfully and maliciously throw or cause to fall, or strike at, against, into or upon any engine, tender, carriage or truck, used upon any railway, any wood, stone or other matter or thing with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage or truck, or in or upon any other engine, tender, carriage or truck, of any train, of which such first mentioned engine, tender, carriage or truck shall form part; or,—

- (4) Shall by any unlawful act, or by wilful omission or neglect, endanger or cause to be endangered the safety of any person conveyed or being in or upon a railway, or shall aid or assist therein,—

shall, on conviction thereof in a summary manner before a Stipendiary Magistrate, be imprisoned and kept to hard labour for a term not exceeding twelve calendar months, provided that nothing in this Chapter shall be held to prevent the application of the “Criminal Law Consolidation Acts” (Imperial, 1861), so far as the same relate to railways, and that this Chapter shall be taken cumulatively with the provisions of the said Acts, or of any other Acts now or hereafter applied to the same subject matter.

2. It shall be the duty of every Stipendiary Magistrate before proceeding to the trial of any person charged with any of the offences mentioned in this Chapter, to forward to the Minister of Justice, or in his absence to the Minister of Finance and Customs, a copy of the complaint on oath for his consideration and determination; and if the Minister of Justice, or in his absence the Minister of Finance and Customs, be of opinion that from any cause the charge is a fit subject for prosecution by indictment rather than to be disposed of summarily, the said Stipendiary Magistrate shall deal with the case in all respects as if this Chapter had not been passed.

3. Where any person convicted under this Chapter shall be sentenced to imprisonment for a period exceeding three months, or for any period of time with whipping, he may appeal to the Supreme Court in St. John’s or on Circuit, which shall hear and determine such appeal, and confirm, reverse or modify the sentence.

4. Any person appealing under the foregoing section may be admitted to bail during the pending of the appeal, by order of the Supreme Court in St. John’s or on Circuit, upon recognizances to abide the judgment of the said Court.

TITLE XXIX.

OF BANKS AND BANKING.

CHAPTER 208.

Of the Newfoundland Savings Bank.

SECTION

- 1.—Minister of Finance and Customs and depositors to be body corporate by the name of "The Newfoundland Savings Bank."
- 2.—Revenue liable for deposits.
- 3.—Governor-in-Council to appoint cashier and governors.
- 4.—Governors to continue in office after termination of Assembly until appointment of successors.
- 5.—Governor in Council may remove governors, fill vacancies, &c.; vacancies among directors, how filled.
- 6.—Governor may disallow rules, &c., made by governors.
- 7.—Directors, how appointed.

SECTION

- 8.—Governor to fix salaries, expenses not to exceed \$8,000.
- 9.—Directors to superintend payment and receipts by cashier; report to be laid before the Legislature annually.
- 10.—Deposits, &c., to be kept in place of safety; cashier to give security.
- 11.—Rules regarding deposits.
- 12.—Rules respecting trust money deposited by Supreme Court.
- 13.—Governors may appoint branch banks in outports.
- 14.—Disputes touching deposits may be heard and determined upon petition to Supreme Court.
- 15.—Profits of bank to be applied to liquidation of public debt.

1. The Minister of Finance and Customs of this Colony, and such persons as may for the time being have deposits in the bank hereafter named, shall be a body corporate by the name of "The Newfoundland Savings Bank," by which name they shall have continual succession and a common seal, with power to alter the same at pleasure, and shall sue and be sued in all courts and may hold, purchase, demise and convey any real or personal property.

2. The general revenue of this Colony shall be liable for all moneys deposited in the Bank and all interest payable thereon.

3. The Governor in Council shall appoint a cashier and an accountant of the Bank and eight governors thereof, of whom five shall be selected from the members of the House of Assembly, including the Speaker thereof, and three from the Legislative Council; three of the governors of the Bank shall be a quorum, and shall have full power to make, alter and amend rules and regulations for the management of the Bank: Provided that no person shall be a governor thereof who shall be officially connected with any other bank.

4. Upon the dissolution or termination by efflux of time, of any Assembly, the governors who may at such time be members of the Assembly shall, subject as hereinafter provided, continue in office until the appointment of their successors, after the meeting of the next Assembly.

5. The Governor in Council may at any time remove any of the governors of the said Bank, and also may at any time fill any vacancy that may occur among the said governors by death, resignation, removal or otherwise. Upon a vacancy occurring among the directors, the governors may elect one of their number to fill such vacancy, to hold office until the next annual election of directors.

6. The Governor in Council may disallow any rule, bye-law, or other proceeding of the governors within one month after the same shall have been adopted; and in order to the exercise of this power, copies of the minutes of the proceedings at every meeting of the governors shall be immediately transmitted to the Colonial Secretary, for the information of the Governor in Council.

7. The governors shall annually elect from among themselves three directors, who shall superintend the affairs of the Bank, in accordance with the rules and bye-laws prescribed for the management thereof.

8. The governors of the said Bank may, subject to the revision of the Governor in Council, fix the salaries of the cashier, accountant, directors, and any necessary officers: Provided that the salaries and incidental expenses of the Bank shall not exceed the sum of eight thousand dollars annually.

9. The directors shall personally superintend the payments and receipts by the cashier, examine his accounts and vouchers, and certify the same; the cashier, shall prepare a statement at the end of every year of the accounts and all proceedings, and a report of the state of the Bank, which shall be examined and certified by the directors, and be laid before the Legislature at the next session thereof.

10. All deposits, moneys, funds, securities, and other property of the Bank shall be kept in a place of safety to be approved of by the Governor in Council, and the cashier shall be liable and give sufficient security, to be approved of by the Governor in Council, for the care, custody and safe-keeping thereof, and for the faithful discharge of the duties of his office; but nothing herein contained shall prevent the directors of the Bank from lending, upon real, personal or Government securities, any funds of the Bank.

11. Depositors of sums of not less than four dollars, or over two hundred and fifty dollars, for a period of not less than six months, shall receive interest at the rate of three per centum per annum thereon, but no interest shall be calculated on the fractional part of a dollar, or for a less period than a month; and no account shall be opened before the first day of the month next ensuing after the date of the deposit: Provided that the Governor in Council may, by order, define and limit an amount over two hundred and fifty dollars to be received from depositors in the Bank, and the amount thereof upon which interest shall be payable.

12. Any money belonging to or held in trust for an infant, idiot, lunatic, or a feme covert, or which may be paid into the Supreme Court under order or decree of the Court, may be received by the Bank, there to remain subject to the orders of the said Court, but the interest to be allowed thereon shall be in the discretion of the governors, subject to the order of the Governor in Council.

13. The governors may appoint branches or offices of deposit in any part of this Colony for the convenience of persons residing at a distance from St. John's.

14. All disputes touching the deposits or other affairs or business of the Bank may be heard and determined upon petition to the Supreme Court.

15. The profits of the said Bank now existing, and the profits of the said Bank as they shall arise from time to time and all interest accruing thereon, shall be constituted a sinking fund for the liquidation of the public debt of the Colony, and such fund shall be applied in the first instance towards the payment of all debentures of the Colony, which are or may be held by the said Bank.

CHAPTER 209.

Of Banks and Banking.

SECTION

- 1.—Banks to have lien on stock for debt due by shareholder.
- 2.—Assignment of shares.
- 3.—Deposits.
- 4.—Banks not to recognize trusts, &c.

SECTION

- 5.—Bank holidays.
- 6.—Annual returns.
- 7.—Annual taxes.
- 8.—Recovery of taxes.

1. All chartered or incorporated banks in this Colony shall have a preferential lien on the stock of the said banks for any debt due to them by, and for current liability of, any shareholder, whether joint or several.

2. The shares in the capital stock of any chartered or incorporated bank in this Colony shall be assignable and transferable, subject and according to such regulations as may be established in that behalf by the bye-laws of said bank; but no assignment or transfer shall be valid or effectual unless such assignment or transfer shall first be approved of by the board of directors and entered and registered in a book to be kept for that purpose, nor (unless with the sanction of the directors) until the party making the same shall first discharge all his then existing liabilities to the bank, whether direct or collateral, and whether the same shall be payable then or at any future time.

3. It shall be lawful for any such bank to receive deposits from any person or persons whomsoever, whatever be his, her or their age, status, or condition in life, and whether such person or persons be qualified by law to enter into ordinary contracts or not; and from time to time to repay any or all of the principal thereof, and to pay the whole or any part of the interest thereon, to such person or persons respectively without the authority, aid or assistance of any person or persons, official or officials, being required, unless before such repayment the money so deposited in the said bank be lawfully claimed as the property of some other party, in which case it may be paid to the depositor, with the consent of the claimant or to the claimant with the consent of the depositor, any law, usage or custom to the contrary notwithstanding.

4. No such bank shall be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any deposit may be subject, and, except only in the case of lawful claim by some other party

before repayment, the receipt of any person in whose name such deposit stands, or if it stand in the name of two persons, the receipt of one, and if in the name of more than two persons, the receipt of a majority of such persons, shall be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit, notwithstanding any trust to which such deposit may be subject, and whether or not the bank sought to be charged with such trust (and with whom the deposit may have been made) had notice thereof; and no such bank shall be bound to see to the application of the money paid upon such receipt, any law or usage to the contrary notwithstanding.

5. The following days shall be kept as close holidays (hereinafter called bank holidays) in all banks authorized by law to carry on business in this Colony, that is to say:—Sunday, New Year's Day, Good Friday, Christmas Day, the day after New Year's Day and the day after Christmas Day when New Year's Day and Christmas Day fall on Sunday, and any day appointed by proclamation of the Governor for a public holiday or for a fast or thanksgiving day in this Colony.

6. Every bank doing business within the Colony shall before the 31st day of January in each year furnish to the Minister of Finance and Customs a statement of its business in this Colony for the year ending on the previous 31st day of December in the form of the Schedule to this Chapter, containing the information in the said Schedule indicated, under a penalty of \$10 for every day default shall continue to be made after the said date.

7. All banks doing business in the Colony shall pay to His Majesty for the public uses of the Colony, on the 30th day of June in each year, the following sums, namely:

The Bank of Montreal, the sum of five thousand dollars.

The Bank of Nova Scotia, the sum of three thousand dollars.

The Royal Bank of Canada, the sum of two thousand dollars.

Any other bank, before entering into business, shall pay a minimum tax of two thousand dollars.

8. Every sum hereby made payable shall, as from the date when it shall become payable, constitute a debt due and payable to His Majesty from the bank; and such debt may at any time be recovered in any Court of competent jurisdiction, and shall constitute a first charge on the property, lands, goods, chattels and effects of the bank.

SCHEDULE.

Bank of

- (1) Current loans to the public.
- (2) Current loans to the Government.
- (3) Mortgages on real estate and other property.
- (4) Amounts of bills and notes under discount.
- (5) Deposits bearing interest, payable after notice.
- (6) Deposits not bearing interest.
- (7) Deposits in Savings' Bank department.
- (8) Deposits by the Treasury payable on demand.
- (9) Deposits by the Treasury payable after notice.
- (10) Amount of gold and silver in hand.

CHAPTER 210

Of Warehouse Receipts and other Securities in the Possession of Banks.

SECTION

- 1.—Interpretation.
- 2.—Provisions of the Chapter of general application.
- 3.—Banks may hold warehouse receipts, &c., as collateral.
- 4.—Bank may lend on security of warehouse receipts, &c.
- 5.—Restrictions of acceptance; penalties for misstatements, &c.

SECTION

- 6.—Warehouse receipt continues to cover goods when manufactured.
- 7.—Bank's claim to be given to unpaid vendor's lien.
- 8.—Bank may sell in case of default.
- 9.—Prior rights of fishermen, sealers, &c., unaffected.
- 10.—Warehouse receipts do not require registration, Schedules.

1. In this Chapter, unless the context otherwise requires—

- (1) The expression “the Bank” means any bank to which this Chapter applies.
- (2) The expression “products of the sea” includes fish of all kinds, lobsters, seals and whales, and their products, prepared or in course of preparation for market by any process whatsoever.
- (3) The expression “products of the forest” includes logs, timber, deals, staves and sawn lumber, of every description.
- (4) The expression “goods, wares and merchandize,” includes all articles of commerce.
- (5) The expression “warehouse receipt” means any receipt given by any person for any goods, wares or merchandize in his actual, visible and continued possession, as bailee thereof, in good faith, and not as of his own property; and includes receipts given by any person who is the owner or keeper of a harbor, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for storage of goods, wares or merchandize, for goods, wares or merchandize delivered to him as a bailee, and actually in the place, or in one or more of the places owned or kept by him, whether such person is engaged in other business or not, and also includes receipts given by any person in charge of logs or timber in transit

from timber limits, or other lands, to their place of destination.

- (6) The expression "bill of lading" includes all receipts for goods, wares or merchandize accompanied by an undertaking to transport the same from the place where they were received to some other place, whether by land or water, or partly by land and partly by water, and by any mode of carriage whatsoever.
- (7) The word "manufacturer" includes any person who produces by hand, art, process, or mechanical means, any goods, wares or merchandize.
- (8) The term "security receipt" means the security receipt referred to in section 4 of this Chapter.

2. The provisions of this Chapter apply to the several banks enumerated in Schedule A hereto, and to every bank incorporated by special Act of the Legislature after the 22nd day of April A.D., 1902, whether this Chapter is mentioned in its Act of Incorporation or not, and to any chartered bank of the United Kingdom or of the Dominion of Canada, which shall have an agency or branch establishment in this Colony, and shall be approved by the Governor in Council.

3. The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favor, or as security for any liability incurred by it for any person; and the warehouse receipt or bill of lading so acquired shall vest in the bank, from the time of the acquisition thereof, all the right and title of the previous holder or owner thereof, or if such warehouse receipt or bill of lading is made directly in favor of the bank it shall vest in the bank from the time of the acquisition thereof all the right and title of the person from whom it was received or acquired in the goods, wares and merchandize mentioned therein.

- (2) If the previous holder of such warehouse receipt or bill of lading is the agent of the owner of the goods, wares and merchandize mentioned therein, the bank shall be vested with all the right and title in such goods, wares and merchandize of the owner thereof, subject to his right to have the same re-transferred to him, if the debt or liability as security for which they are held by the bank is paid.

- (3) In this section the expression "agent" means any person en-

trusted with the possession of goods, wares and merchandize, or to whom the same are consigned, or who is possessed of any bill of lading, receipt, order or other document used in the course of business as proof of the possession or control of goods, wares and merchandize, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive the goods, wares and merchandize thereby represented, and such person shall be deemed the possessor of such goods, wares and merchandize, bill of lading, receipt, order or other document, as aforesaid, as well if the same are held by any person for him, or subject to his control as if he is in actual possession thereof.

- (4) The warehouse receipt may be in the form set forth in Schedule B, or to the like effect.
- (5) A warehouse receipt for any product of the sea, may be in the form of Schedule C to this Chapter, or to the like effect. The receipt shall describe the goods, wares and merchandize covered thereby by value, quantity and quality, and by naming the place in which they are stored. Such receipt shall entitle the holder thereof, in addition to the rights conferred by sub-section one of this section, to goods, wares and merchandize of the same quantity and quality, or if goods, wares and merchandize of the same quantity and quality be not obtainable, to goods, wares and merchandize of the same or less value, and substantially the same character, out of any goods, wares and merchandize in the possession of the warehouse keeper, the property of the person on whose behalf, account or interest the receipt was given. The holder of such receipt shall have and may exercise in respect of any goods, wares and merchandize to which he may be entitled hereunder, the rights conferred by this Chapter upon the holder of a warehouse receipt for the goods, wares and merchandize originally covered by such receipt; and the person giving such receipt shall be discharged of all liability thereunder, upon delivering the goods, wares and merchandize, as provided by this Chapter, to, or pursuant to, the order of the holder of such receipt.

4. The bank may lend money to any person engaged in business as

a wholesale manufacturer of any goods, wares and merchandize, upon the security of the goods, wares and merchandize manufactured by him or procured for such manufacture.

- (2) The bank may also lend money to any wholesale purchaser, or shipper of or dealer in products of agriculture, the forest, quarry and mine, or flour or molasses, or to any wholesale purchaser or shipper of, or dealer in live stock or dead stock, and the products thereof, upon the security of such products, or flour, or molasses, or of such live stock or dead stock, and the products thereof.
- (3) The bank may also lend money to any person upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber.
- (4) Such security may be given by the manufacturer, purchaser, shipper, dealer or purchaser, and may be taken in the form set forth in Schedule D to this Chapter, or to the like effect.
- (5) The bank may allow the goods, wares and merchandize covered by security under clauses one and two of this section to be removed, and other goods, wares and merchandize of substantially the same character, and the same or less value, to be substituted therefor, and the goods, wares and merchandize so substituted shall be covered by such security as if originally covered thereby.
- (6) The bank may also lend money to any wholesale purchaser, or shipper, or dealer in the products of the sea, upon the security of such products. Such security may be given by such purchaser, shipper or dealer, and may be taken in the form set forth in Schedule D to this Chapter or to the like effect. Such security shall describe the goods, wares and merchandize by value, quantity and quality, and specify the premises in, on or about which the said goods, wares or merchandize are stored or placed, and such security shall entitle the holder thereof to goods, wares and merchandize of the same quantity and quality, or if such quantity or quality be not obtainable, to goods, wares and merchandize of substantially the same character, and of the same or less value, out of any goods, wares and merchandize, the property of the person giving such security in, on or about the

said premises. Any goods, wares and merchandize subject under the provisions hereof to the security shall, for all purposes whatsoever, be held to be assigned to the holder of such security as fully as if originally included therein, and the holder of such security shall have and may exercise in respect of any such goods, wares and merchandize, the same rights as he had and was entitled to exercise in respect of the goods, wares and merchandize originally assigned by the said security.

- (7) By virtue of any security under this section, the bank shall acquire such rights and powers in respect of the goods, wares and merchandize covered thereby, as if it had acquired the same by virtue of a warehouse receipt, in addition to the rights and powers under this section.

5. The bank shall not acquire or hold any warehouse receipt or bill of lading or security under section 4 of this Chapter to secure the payment of any bill, note, debt or liability, unless such bill, note, debt or liability is negotiated or contracted at the time of the acquisition thereof by the bank, or upon the written promise or agreement that such warehouse receipt or bill of lading or security shall be given to the bank, but such bill, note, debt or liability may be renewed, or the time for the payment thereof be extended, without affecting any such security.

- (2) The bank may, on shipment of any goods, wares and merchandize, for which it holds a warehouse receipt or security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor, or, on the receipt of any goods, wares and merchandize for which it holds a bill of lading or security as aforesaid, it may surrender such bill of lading or security, store such goods, wares and merchandize, and take a warehouse receipt therefor, or may ship them, or any part of them, and take another bill of lading therefor.

- (3) Everyone is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement in any warehouse receipt, bill of lading or security as aforesaid.

- (4) Everyone is guilty of a misdemeanor and liable to imprisonment for a term not exceeding two years who, having possession or control of any goods, wares or merchandize covered by

any warehouse receipt, bill of lading or security as aforesaid, and having knowledge of such receipt, bill of lading or security, and without consent of the bank, in writing, and before the advance, bill, note, debt or liability thereby secured has been fully paid, wilfully alienates or parts with any such goods, wares or merchandize, or wilfully withholds from the bank possession thereof upon demand after default in payment of such advance, bill, note, debt or liability.

6. If goods, wares and merchandize are manufactured or produced from the goods, wares and merchandize, or any of them, included in or covered by any warehouse receipt or security given under section 4 of this Chapter, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandize during the process and after the completion of such manufacture and production with the same right and title, and for the same purposes, and upon the same conditions, as it held or could have held the original goods, wares and merchandize.

7. All advances made on the security of any bill of lading or warehouse receipt, or security given under section 4 of this Chapter shall give to the bank making such advance a claim for the repayment of such advances on the goods, wares and merchandize therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor; but such preference shall not be given over the claim of any unpaid vendor who has a lien upon such goods, wares and merchandize at the time of the acquisition by the bank of such warehouse receipt, bill of lading or security, unless such warehouse receipt, bill of lading or security was acquired without knowledge on the part of the bank of such lien.

8. In the event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading or security given under section 4 of this Chapter, the bank may sell the goods, wares and merchandize mentioned therein, or as much thereof as will suffice to pay such debt with interest and expenses, returning the overplus, if any, to the person from whom such warehouse receipt, or bill of lading or security on the goods, wares and merchandize mentioned therein, as the case may be, were acquired; but such power of sale shall be subject to the following provisions, namely:

- (1) No goods, wares and merchandize, other than products of the

forest, shall be sold by the bank under this Chapter without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least ten days prior to the sale thereof.

(2) No sale of any product of the forest shall be made under this Chapter without the consent of the owner, until notice of the time and place of such sale has been given by a registered letter, mailed in the post office to the last known address of the pledger thereof, at least thirty days prior to the sale thereof.

(3) Every sale of goods, wares and merchandize under this section, without the consent of the owner, shall be made by public auction, after a notice thereof, by advertisement, stating the time and place thereof, in at least two newspapers of this Colony, published in or near the place where the sale is to be held.

9. Nothing herein shall affect the rights of fishermen, seamen, or other servants, or of sealers under Chapter 83 of the Consolidated Statutes (Third Series) entitled "Of the Supreme Court and Procedure therein."

10. The provisions of Chapter 111 of the Consolidated Statutes (Third Series), entitled "Of the Registration of Deeds," shall not apply to a warehouse receipt, or bill of lading, or to a security under section 4 of this Chapter.

SCHEDULE A.

BANKS TO WHICH THIS CHAPTER APPLIES.

1. The Bank of Montreal.
2. The Bank of Nova Scotia.
3. The Royal Bank of Canada.

SCHEDULE B.

WAREHOUSE RECEIPT.

The undersigned acknowledges to have received from and to have now stored in the following goods, wares and merchandize, viz.: which goods, wares and merchandize

are now separate and will be kept separate, from other goods, wares and merchandize, and are to be delivered pursuant to the order of, to be endorsed hereon, and are to be kept in store till delivered, pursuant to such order.

This is intended as a warehouse receipt within the meaning of Chapter 210 of the Consolidated Statutes (Third Series).

Dated at, the day of

..... Signature.

SCHEDULE C.

WAREHOUSE RECEIPT FOR PRODUCTS OF THE SEA.

The undersigned acknowledges to have received from and to have now stored in the following goods, wares and merchandize, viz.: valued at \$....., which goods, wares and merchandize, or with the holder's consent, other goods, wares and merchandize of like quantity and quality, or of the same or less value and of substantially the same character, are to be delivered pursuant to the order of, to be endorsed hereon, and are to be kept in store till delivered, pursuant to such order.

This is intended as a warehouse receipt within the meaning of Chapter 210 of the Consolidated Statutes (Third Series).

. Dated at, this day of

..... Signature.

SCHEDULE D.

FORM OF SECURITY UNDER SECTION 4.

In consideration of an advance of dollars made by (name of bank) to A. B., for which the said bank holds the following bills or notes, (describe fully the bills or notes held, if any), the goods, wares and merchandize mentioned below are hereby assigned to the said bank as security for the payment on or before the day of, of the said advance, together with interest thereon at the rate of per cent. per annum from the day of (or of the said bills and notes, or renewals thereof, or substitutions therefor, and interest thereon, or as the case may be).

This security is given under the provisions of section 4, of Chapter

210 of the Consolidated Statutes (Third Series) and is subject to all the provisions of the said Chapter.

The said goods, wares and merchandize are now owned by, and are now in possession of, and are free from any mortgage, lien or charge thereon, (or as the case may be), and are in (place or places where goods are), and are the following (particular description of goods assigned) and are valued at (state estimated value when security given).

Dated at, the day of

..... Signature.

N.B.—The goods, wares and merchandize may be set out in a schedule annexed to the security.

TITLE XXX.

OF LABOUR.

CHAPTER 211.

Of the Liability of Employers for Injuries to Workmen in their Service.

SECTION

- 1.—Cases where employer is liable to suit of employee.
- 2.—Cases where workmen not entitled to compensation.
- 3.—Amount of compensation recoverable.
- 4.—Penalty to be deducted from compensation.

SECTION

- 5.—Liability for fault, &c., of sub-contractor.
- 6.—Notice of injury, and limitation of actions.
- 7.—Contracting out of chapter prohibited.
- 8.—Interpretation.

1. Where personal injury is caused to a workman—

- (1) By reason of any defect in the condition of the ways, works, machinery or plant, connected with or used in the business of the employer; or
- (2) By reason of the negligence of any person, in the service of the employer, who has any superintendence entrusted to him, whilst in the exercise of such superintendence; or
- (3) By reason of the negligence of any person, in the service of the employer, to whose orders or directions the workman, at the time of the injury, was bound to conform, and did conform, where such injury resulted from his having so conformed, or
- (4) By reason of the act or omission of any person in the service of the employer, done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) By reason of the negligence of any person in the service of the employer, who has the charge or control of any signal, points, locomotive engine or train upon a railway,—

the workman, or in case the injury results in death, the legal personal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

2. A workman shall not be entitled under this Chapter to any right of compensation or remedy against the employer in any of the following cases, that is to say:—

(1) Under sub-section one, of section one, unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition.

(2) Under sub-section four, of section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws or instructions therein mentioned: Provided that, where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law, by virtue of any Act of the Legislature or by the Governor in Council of this Colony, it shall not be deemed, for the purposes of this Chapter, to be an improper or defective rule or bye-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

3. The amount of compensation recoverable, under this Chapter, shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment, and in the district in which the workman is employed at the time of the injury.

4. There shall be deducted from any compensation awarded to any workman, or representatives of a workman, claiming by, under or through a workman, in respect of any cause of action under this Chapter, any pen-

alty, or part of a penalty, which may have been paid, in pursuance of any other Act or law having force in this Colony, to such workman, representatives or persons in respect of the same cause of action; and where an action has been brought, under this Chapter, by any workman or the representatives of any workman, or any person claiming by, under or through such workman, for compensation in respect of any cause of action arising under this Chapter, and payment has not previously been made of any penalty or part of a penalty under any other Act or law in force in this Colony in respect of the same cause of action, such workman, representatives or person shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act or law in respect of the same cause of action.

5. When the execution of any work is being carried into effect under any contract and

- (1) The person for whom the work or any part thereof is done owns or supplies any ways, works, machinery, plant, buildings or premises, used for the purpose of executing the work; and
- (2) By reason of any defect in the condition or arrangement of such ways, works, machinery, plant, buildings or premises, personal injury is caused to any workman employed by the contractor or by any sub-contractor; and
- (3) The defect or the failure to discover or remedy the defect arose from the negligence of the person for whom the work or any part thereof is done, or of some person being in his service and entrusted by him with the duty of seeing that such condition or arrangement is proper;

the person for whom the work is done, or that part of the work is done, shall be liable to pay compensation for the injury as if the workman had been employed by him; and for that purpose shall be deemed to be the employer of the workman within the meaning of this Chapter, provided that such person for whom the work is done shall be entitled to be indemnified by any other person who would have been liable independently of this section.

6. Proceedings for the recovery under this Chapter of compensation for an injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and be-

fore the workman has voluntarily left the employment in which he was injured, and unless action is commenced within six months from the occurrence of the accident causing the injury, or in case of death, within six months from the time of death: Provided always, that the want of, or any defect or inaccuracy in, such notice shall not be a bar to the maintenance of such proceedings if it appears that the employer is not prejudiced in his defence by the want, defect or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake or other reasonable cause.

(2) Notice in respect of an injury under this Chapter shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury, and the date at which it was sustained, and shall be served on the employer, or if there be more than one employer, upon one of such employers.

(3) The notice may be served by delivering the same to, or at the residence or place of business of, the person on whom it is to be served.

(4) The notice may also be served by post, by registered letter addressed to the person on whom it is to be served, at his last known place of residence or place of business, and, if served by post, shall be deemed to have been served at the time when the letter containing the same would have been delivered in the ordinary course of post, and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(5) When the employer is a body of persons corporate or unincorporate, the notice may also be served by delivering the same at, or by sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, any one of the offices of such body.

7. No contract or agreement made or entered into by a workman shall be a bar or constitute a defence to any action for the recovery of compensation under this Chapter for an injury happening to a workman.

8. For the purposes of this Chapter, unless the context otherwise requires:

The expression "person who has superintendence entrusted to him," shall mean a person whose sole or principal duty is that of superintendence.

The expression "employer," includes a body of persons corporate or unincorporate and the legal representatives of a deceased employer.

The expression "workman," does not include a domestic or menial servant, but means any person who being a laborer, servant in husbandry, journeyman, artificer, hand-craftsman, miner, railway servant, tramway servant, street railway servant, or person employed in works for the generation, control or management of electric power, or person otherwise engaged in manual labor, whether under the age of twenty-one years or above that age, who has entered into or works under a contract with an employer, whether the contract be express or implied, oral or in writing, and whether it be a contract of service or a contract personally to execute any work or labor.

CHAPTER 212

Of Compensation to Workmen.

SECTION

- 1.—Employer shall be liable to pay compensation for injuries sustained in employments to which this Chapter applies.
- 2.—Respecting proceedings for the recovery of such compensation.
- 3.—Government Engineer may grant certificate of approval of scheme of compensation, and may revoke same.
- 4.—Liability of principal for contractor.
- 5.—Respecting rights of workman under contract of insurance by employer.
- 6.—Respecting liability of third persons for damages.
- 7.—Application to workmen under Crown.
- 8.—Respecting returns by employers.
- 9.—Employments to which Chapter applies
- 10.—Interpretation section.

SCHEDULE

- 1.—Amount of compensation.
- 2.—Earnings and average weekly earnings.
- 3.—Fixing amount of weekly payments.
- 4.—Medical examination.
- 5.—Payments in case of death—to whom made.
- 6.—Payment during legal disability.
- 7.—Settling of dependents.
- 8.—Investment of sum for dependents.
- 9.—Trustees Act to apply to investments.
- 10.—Medical examination.
- 11.—Review of weekly payment.
- 12.—Payment of limit sum.
- 13.—Assignment of such payment.
- 14.—Suspension of right of payment.
- 15.—Agreements to be forwarded to Registrar.
- 16.—Agreements not registered no exemption.
- 17.—No fees of Court to be charged.

1. (1) If in any employment, to which this Chapter applies, personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter mentioned, be liable to pay compensation in accordance with the Schedule to this Chapter.

(2) Provided that—

- (a) The employer shall not be liable under this Chapter in respect of any injury which does not disable the workman for a period of at least one week from earning full wages at the work at which he was employed.
- (b) When the injury was caused by the personal negligence or wilful act of the employer or of some person for whose act or default the employer is responsible, nothing in this Chapter shall affect any civil liability of the employer, but in that case the workman may, at his option, either claim compensation under this Chapter or take proceedings independently of this Chapter, but the employer shall not be liable to pay compensation for injury to a workman by accident arising out of and in the course of the employment both independently of and also under this Chapter and shall not be liable to any proceedings independently of this

Chapter, except in case of such personal negligence or wilful act as aforesaid.

- (c) If it is proved that the injury to a workman is attributable to the serious or wilful misconduct of that workman any compensation claimed in respect of that injury shall be disallowed.
- (3) If within the time hereinafter in this Chapter limited for taking proceedings an action is brought to recover damages independently of this Chapter for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Chapter, the action shall be dismissed; but the Court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which, in its judgment, have been caused by the plaintiff bringing the action instead of proceeding under this Chapter. In any proceeding under this sub-section when the Court assesses the compensation it shall give a judgment for the amount of the compensation it has assessed less the amount of such deduction for costs.
- (4) All proceedings for the recovery under this Chapter of compensation for any injury shall be taken by action in the Supreme Court.
- (5) Nothing in this Chapter shall affect any proceedings for a fine under the enactments relating to mines, factories or workshops, or the application of any such fine.
2. (1) Proceedings for the recovery under this Chapter of compensation for any injury shall not be maintainable unless notice of the accident has been given as soon as practicable after the happening thereof and before the workman has voluntarily left the employment in which he was injured, and unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in the case of death, within six months from the time of death and within two years from the date of the accident.

Provided always that—

- (a) The want of notice or any defect in or inaccuracy in such notice shall not be a bar to the maintenance of such proceedings if it is found in the proceedings for settling the claim that the employer is not, or would not, if a notice or an amended notice were given and the hearing postponed, be prejudiced in his defence by the want, defect, or inaccuracy, or that such want, defect or inaccuracy was occasioned by mistake, absence from the Colony, or other reasonable cause.
 - (2) Notice in respect of any injury under this Chapter shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which the accident happened, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.
 - (3) The notice may be served by delivering the same at, or sending it by post in a registered letter addressed to the residence or place of business of the person on whom it is to be served.
 - (4) When the employer is a body of persons, corporate or unincorporate, the notice may also be served by delivering the same at, or by the sending it by post in a registered letter addressed to the employer at the office, or, if there be more than one office, at any one of the offices of such body.
- 3.** (1) If the Government Engineer, after taking steps to ascertain the views of the employer and workmen, certifies that any scheme of compensation, benefit or insurance for the workmen of an employer in any employment, whether or not such scheme includes other employers and their workmen, provides scales of compensation not less favorable to the workmen and their dependents than the corresponding scales contained in this Chapter, and that, where the scheme provides for contributions by the workmen, the scheme confers benefits at least equivalent to those contributions, in addition to the benefits to which workmen would have been entitled under this Chapter, and that a majority (to be ascertained by ballot) of the workmen to whom the scheme is applicable are in favour of such scheme, the employer

may, whilst the certificate is in force, contract with any of his workmen that the provisions of the scheme shall be substituted for the provisions of this Chapter, and thereupon the employer shall be liable only in accordance with the scheme, but, save as aforesaid, this Chapter shall apply notwithstanding any contract to the contrary made after the commencement of this Chapter.

- (2) The Government Engineer may give a certificate, to expire at the end of a limited period of not less than five years, and may from time to time renew, with or without modifications, such a certificate to expire at the end of the period for which it is renewed.
- (3) No scheme shall be so certified which contains an obligation upon the workmen to join the scheme as a condition of their hiring, or which does not contain provisions enabling a workman to withdraw from the scheme.
- (4) If complaint is made to the Government Engineer by or on behalf of the workmen of any employer that the benefits conferred by any scheme no longer conform to the conditions stated in sub-section 1 of this section, or that the provisions of such scheme are being violated, or that the scheme is not being fairly administered, or that satisfactory reasons exist for revoking the certificate, the engineer shall examine into the complaint, and if satisfied that good cause exists for such complaint, shall, unless the cause of complaint is removed, revoke the certificate.
- (5) When a certificate is revoked or expires, any moneys or securities held for the purpose of the scheme shall, after provision has been made to discharge the liabilities already accrued, be distributed as may be arranged between the employer and workmen, or as may be determined by the Government Engineer in the event of a difference of opinion.
- (6) Whenever a scheme has been certified as aforesaid, it shall be the duty of the employer to answer all such enquiries and to furnish all such accounts in regard to the scheme as may be made or required by the Government Engineer.
- (7) The Government Engineer shall make regulations for the purpose of carrying this section into effect.

4. (1) Where in any employment to which this Chapter applies, any person (in this section referred to as the principal), in the course of, or for the purpose of his trade or business, contracts with any other person (in this section referred to as the contractor), for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work, any compensation under this Chapter which he would have been liable to pay if that workman had been immediately employed by him; and where compensation is claimed from or proceedings are taken against the principal then in the application of this Chapter references to the principal shall be substituted for references to the employer except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed.
- (2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by any person who would have been liable to pay compensation to the workman independently of this section.
- (3) Nothing in this section shall be construed as preventing a workman recovering compensation under this Chapter from the contractor instead of the principal.
- (4) This section shall not apply to any case where the accident occurred elsewhere than on, or in, or about the premises on which the principal has undertaken to execute the work or which are otherwise under his control or management.
5. (1) Where any employer has entered into a contract with any insurers in respect of any liability under this Chapter to any workman, then in the event of the employer becoming insolvent, or making an arrangement or composition with his creditors, or, if the employer is a company, in the event of the company having commenced to be wound up, the rights of the employer against the insurers as respects that liability shall, notwithstanding anything in the enactments relating to insolvency and the winding-up of companies, be transferred to and vest in the workman, and upon any such transfer the insurers shall have the same rights and re-

medies and be subject to the same liabilities as if they were the employer; so, however, that the insurers shall not be under any greater liability to the workman than they would have been under to the employer.

- (2) If the liability of the insurers to the workman is less than the liability of the employer to the workman, the workman may prove for the balance in the insolvency or liquidation.
- (3) There shall be included among the debts which, under section 249 of the Judicature Act, are, in the distribution of the property of an insolvent and in the distribution of the assets of the company being wound up, to be paid in priority to all other debts, the amount, not exceeding in any individual case five hundred dollars, due in respect of any compensation, the liability whereof accrued before the date of the filing of the petition in insolvency, or the date of the commencement of the winding-up, and the Acts relating thereto shall have effect accordingly. Where the compensation is a weekly payment, the amount due in respect thereof shall for the purposes of this provision be the amount of the lump sum as the Court or Judge may, on the application of either party, settle for the redemption of such weekly payment.
- (4) The provisions of this section with respect to preferences and priorities shall not apply where the insolvent or the company has entered into such a contract with insurers as aforesaid.
- (5) This section shall not apply where a company is wound up voluntarily for the purposes of reconstruction or of amalgamation with another company.

6. Where the injury for which compensation is payable under this Chapter was caused under circumstances creating a legal liability in some person other than the employer to pay damages in respect thereof—

- (1) The workman may take proceedings both against that person to recover damages and against any person liable to pay compensation under this Chapter for such compensation, but shall not be entitled to recover both damages and compensation; and

- (2) If the workman has recovered compensation under this Chapter, the person by whom the compensation was paid, and any person who has been called upon to pay an indemnity under the section of this Chapter relating to sub-contracting shall be entitled to be indemnified by the person so liable to pay damages as aforesaid.

7. This Chapter shall apply to workmen employed under the Crown, to whom this Chapter would apply if the employer were a private person.

8. (1) Every employer in any industry to which the Governor in Council may direct that this section shall apply shall, on or before such day in every year as the Governor in Council may direct, send to the Colonial Secretary a correct return, specifying the number of injuries in respect of which compensation has been paid under this Chapter during the previous year, and the amount of such compensation, together with such other particulars as to the compensation as the Governor in Council may direct, and in default of complying with this section shall be liable on summary conviction to a fine not exceeding twenty-five dollars.

- (2) Any regulations made by the Governor in Council containing such directions as aforesaid shall be published in the *Royal Gazette* before they shall come into effect.

9. This Chapter shall apply only to employment by the undertakers as hereinafter defined on or in or about a railway, factory, mine, quarry, logging work or engineering work, and to employment by the undertakers as hereinafter defined, on, in or about any building which exceeds twenty feet in height and is being constructed or repaired by means of a scaffolding, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair or demolition thereof.

10. In this Chapter—

Railway includes every station, siding, wharf, or dock, of or belonging to such railway; and also a street railway.

Factory includes any premises, building, workshop, structure, room or place wherein or within the close, curtilage or precincts of which steam, water, or other mechanical power is used to move or work any machinery employed in preparing, manu-

facturing, altering, finishing, or adapting for sale, or in any process incident to the preparing, manufacturing, altering, finishing or adapting for sale of any article, substance, material, fabric or compound, or is used in aid of the manufacturing process carried on there, and shall include every dock, wharf, quay and warehouse, and any place or premises used in the process of loading or unloading or coaling any ships in any dock, harbor or canal, and every dry dock and every laundry worked by steam, water or other mechanical power.

A place or premises shall not be excluded from the definition of a factory by reason only that the place or premises is or are in the open air.

Mines means a mine to which Chapter 131 of these Consolidated Statutes, entitled "Of the Regulation of Mines," applies.

Quarry means every place (not being a mine) in which persons work in getting slate, stone, or other minerals, and any part of which is more than twenty feet deep.

Logging work means any work in connection with the cutting or felling of trees, sticks or logs for the purpose of manufacturing the same into lumber, pulp or other products, conveying same to a river, stream, pond or lake or to salt water and floating same down a river or stream.

Engineering work means any work of construction or alteration or repair of a railroad, harbor, dock, dam, canal or sewer, and includes any other work for the construction, alteration or repair of which machinery driven by steam, water or other mechanical power is used.

Undertaker means in the case of a railway, any railway company and any person or body corporate having the maintenance, operation or control of any railway, and any person or body corporate owning, using or operating a railway for its own business; in the case of a factory, the person or body corporate in actual possession of the premises and having control of the business there carried on; in the case of a mine or quarry, the owner within the meaning of Chapter 131 of these Consolidated Statutes entitled "Of the Regulation of Mines;" and in the case of an engineering work, the person or body corporate undertaking the construction,

alteration or repair; and in the case of a building means the person undertaking the construction, repair or demolition; and in the case of logging work means the person on whose property the said logging work is undertaken.

Employer includes any body of persons, corporate or unincorporate, and the legal personal representatives of a deceased employer.

Workman means every person who is engaged in an employment to which this Chapter applies, whether by way of manual labor or otherwise, and whether his agreement is one of service or apprenticeship or otherwise and is expressed or implied, is oral or in writing. Any reference to a workman who has been injured shall, where the workman is dead, include a reference to his legal personal representative or to his dependents or other person to whom compensation is payable.

Dependents means such members of the workman's family as were wholly or in any part dependent upon the earnings of the workman at the time of his death or would, but for the incapacity due to the accident, have been so dependent.

Member of a family means wife or husband, father, mother, grandmother, grand-father, step-father, step-mother, son, daughter, grand-son, grand-daughter, step-son, step-daughter, brother, sister, half-brother, half-sister.

SCHEDULE.

1. The amount of compensation under this Chapter shall be:

(1) Where death results from the injury—

(a) If the workman leaves any dependents wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of seven hundred and fifty dollars, whichever of those sums is the larger, but not exceeding in any case fifteen hundred dollars, provided that the amount of any weekly payments made under this Chapter, and any lump sum paid in redemption thereof, shall be deducted from such sum, and, if the period of the workman's employment by the said employer has been less than the

said three years, then the amount of his earnings during the said three years shall be deemed to be one hundred and fifty-six times his average weekly earnings during the period of his actual employment under the said employer.

(b) If the workman does not leave any such dependents, but leaves any dependents in any part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined to be reasonable and proportionate to the injury to the said dependents; and

(c) If he leaves no dependents, the reasonable expenses of his medical attendance and burial, not exceeding fifty dollars.

(2) Where total or partial incapacity for work results from the injury, a weekly payment during the incapacity not exceeding fifty per cent. of his average weekly earnings during the previous twelve months, if he has been so long employed, but if not then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed five dollars.

Provided that—

(a) If the incapacity lasts less than two weeks no compensation shall be payable in respect of the first week; and

(b) As respects the weekly payments during total incapacity of a workman who is under twenty-one years of age at the date of the injury, and whose average weekly earnings are less than five dollars, the amount payable shall be one hundred per cent. of his average weekly earnings, but the weekly payment shall in no case exceed two dollars and fifty cents.

2. For the purposes of the provisions of this Schedule relating to “earnings” and “average weekly earnings” of a workman, the following rules are provided:

(1) Average weekly earnings shall be computed in such manner as is best calculated to give the rate per week at which the workman was being remunerated: Provided that where by reason of the shortness of the time during which the work-

man has been in the employment of his employer, or the casual nature of his employment, or the terms of the employment it is impracticable at the date of the accident to compute the rate of remuneration, regard may be had to the average weekly amount which, during the twelve months previous to the accident, was being earned by a person in the same grade, employed at the same work by the same employer, or, if there is no person so employed, by a person in the same grade employed in the same class of employment and in the same district.

- (2) When the workman had entered into concurrent contracts of service with two or more employers under which he worked at one time for one such employer, and at another time for another such employer, his average weekly earnings shall be computed as if earnings under all such contracts were earnings in the employment of the employer for whom he was working at the time of the accident.
- (3) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the workman was employed at the time of the accident, uninterrupted by absence from work due to illness or any other unavoidable cause.
- (4) Where the employer has been accustomed to pay to the workman a sum to cover any special expenses entailed on him by the nature of his employment the sum so paid shall not be reckoned as part of the earnings.

3. In fixing the amount of the weekly payment, regard shall be had to any payment, allowance or benefit which the workman may receive from the employer during the period of his incapacity, and in the case of partial incapacity the weekly payment shall in no case exceed the difference between the amount of the average weekly earnings of the workman before the accident, and the average weekly amount which he is earning or is able to earn in some suitable employment or business after the accident, but shall bear such relation to the amount of that difference as under the circumstances of the case may appear proper.

4. Where a workman has given notice of an accident he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer; and, if he

refuses to submit himself to such examination or in any way obstructs the same, his right to compensation, and to take or prosecute any proceeding under this Chapter in relation to compensation, shall be suspended until such examination has taken place.

5. The payment in the case of death shall be paid to such person as the Court or a Judge thereof may direct, and any sum so paid shall, subject to the provisions of this Schedule, be invested, applied, or otherwise dealt with by the Court, in such manner as the Court or a Judge thereof thinks fit, for the benefit of the persons entitled thereto under this Chapter, and the receipt of such persons shall be a sufficient discharge in respect of the amount paid in. Provided that, if so agreed, the payment in case of death shall, if the workman leaves no dependents, be made to his legal personal representative, or, if he has no such representative, to the person to whom the expenses of medical attendance and burial are due.

6. Where a weekly payment is payable under this Chapter to a person under any legal disability the Court or a Judge thereof may order that the weekly payment be paid during the disability to such person as the Court or a Judge shall order, and the provisions of this Schedule with respect to sums required by this Schedule to be paid, shall apply to sums paid in pursuance of any such order.

7. Any question as to who is a dependent and the amount payable to each dependent shall, in default of agreement, be settled by the Court or a Judge. Where there are both total and partial dependents nothing in this Schedule shall be construed as preventing the compensation being allotted partly to the total and partly to the partial dependents.

8. Where, on application being made, it appears to the Court or a Judge thereof that, on account of neglect of children on the part of a widow, or on account of the variation of the circumstances of the various dependents, or for any other sufficient cause, an order of the Court or a Judge thereof as to the apportionment amongst the several dependents of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested, applied or otherwise dealt with, ought to be varied, the Court or a Judge thereof may make such order for the variation of the former order as in the circumstances of the case the Court or Judge may think just.

9. Any sum which under this Schedule is ordered to be invested,

may be invested in whole or in part in the manner provided by Chapter 125 of these Consolidated Statutes, entitled "Of Trustees."

10. Any workman receiving weekly payments under this Chapter shall, if so required by the employer from time to time, submit himself for examination by a duly qualified medical practitioner, provided and paid by the employer. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.

11. Any weekly payment may be reviewed at the request either of the employer or of the workman and on such review may be ended, diminished or increased, subject to the maximum above provided, and the amount of payment shall, in default of agreement, be settled by the Court or a Judge thereof. Provided that where the workman was at the date of the accident under twenty-one years of age and the review takes place more than twelve months after the accident, the amount of the weekly payment may be increased to any amount not exceeding fifty per cent. of the weekly sum which the workman would probably have been earning at the date of the review if he had remained uninjured, but not in any case exceeding five dollars.

12. Where weekly payment has continued for not less than six months, the liability therefor may, on the application by or on behalf of the employer, be redeemed by the payment of a lump sum to be settled, in default of agreement, by the Court or a Judge, and such lump sum may be ordered to be invested or otherwise applied as above mentioned: Provided that the said weekly payments and lump sum together shall not exceed fifteen hundred dollars.

13. A weekly payment or a sum paid by way of redemption thereof shall not be capable of being assigned, charged or attached, and shall not pass to any other person by operation of law, nor shall any claim be set off against the same.

14. Where under this Schedule a right to compensation is suspended no compensation shall be payable in respect of the period of suspension.

15. Where the amount of compensation under this Chapter has been ascertained or any weekly payment varied or any other matter set-

tled under this Chapter by agreement, a memorandum thereof shall be sent in manner prescribed by rules of Court by any party interested to the Registrar of the Supreme Court, who shall subject to such rules, on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a judgment of the Supreme Court.

Provided that—

- (1) No such memorandum shall be recorded before seven days after the dispatch by the Registrar of notice to the parties interested; and
- (2) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Chapter, and the employer, in accordance with rules of Court, proves that the workman has in fact returned to work and is earning the same wages as before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the Court or a Judge may think just; and
- (3) The Court or a Judge may at any time rectify the register;
- (4) Where it appears to the Registrar, on any information which he considers sufficient, that an agreement as to the redemption of a weekly payment by a lump sum or any agreement as to the amount of compensation payable under this Chapter ought not to be registered by reason of the inadequacy of the sum or amount or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration, and refer the matter to the Court or a Judge who shall, in accordance with rules of Court, make such order (including an order as to any sum already paid under the agreement) as under the circumstances may be considered just; and
- (5) The Court or a Judge may, within six months after a memorandum of agreement as to the redemption of a weekly payment by a lump sum, or of an agreement as to the amount of compensation payable under this Chapter, has been recorded in the register, order that the record be removed

from the register on proof to its or his satisfaction that the agreement was obtained by fraud or undue influence or other improper means and make any such order (including an order as to any sum already paid under the agreement) as under the circumstances may be considered just.

16. An agreement as to the redemption of a weekly payment by a lump sum if not registered in accordance with this Chapter shall not, nor shall the payment of the sum payable under the agreement exempt the person by whom the weekly payment is payable from liability to make that weekly payment, and an agreement as to the amount of compensation payable under this Chapter if not so registered, shall not, nor shall the payment of the sum payable under the agreement, exempt the person by whom the compensation is payable from liability to pay compensation, unless in either case he proves that the failure to register was not due to any neglect or default on his part.

17. No Court fee shall be payable by any party in respect of any proceedings by or against a workman under this Chapter.

CHAPTER 213.

Of Compensation to Families of Deceased Persons when Death occurs through Negligence.

SECTION

- 1.—An action maintainable against persons causing death through neglect, &c., notwithstanding death of injured person.
- 2.—Action, for whose benefit and by whom to be brought.
- 3.—Where no action brought within six months by executor of person killed, then action may be brought by person beneficially interested in result of action.

SECTION

- 4.—Damages given by jury to be divided as jury shall find and direct; money paid into Court may be paid in one sum without specifying shares; if not accepted, defendant entitled to verdict; limitation of action.
- 5.—Plaintiff to deliver full particulars of claim.
- 6.—Construction of words.

1. Whensoever the death of a person shall be caused by any wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured and although the death shall have been caused under such circumstances as amount in law to felony.

2. Every such action shall be for the benefit of the wife, husband, parent and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased.

3. If, and so often as, it shall happen, at any time or times hereafter, in any of the cases in the first section of this Chapter intended and provided for, that there shall be no executor or administrator of the person deceased, or that there being an executor or administrator, no such action as in the said section mentioned shall, within six calendar months after the death of such deceased person as therein mentioned, have been brought by and in the name of his or her executor or administrator, then, and in every such case, such action may be brought by and in the name or names of all or any of the persons (if more than one) for whose benefit such action would have been if it had been brought by and in the name of such executor or administrator, and every action so to be brought shall be for the benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be as if it were brought by and in the name of such executor or administrator.

4. In any action brought under the provisions of this Chapter the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties, respectively, for whom and for whose benefit such action shall be brought, and the amount so recovered, divided amongst the beforementioned parties, in such shares as the jury divided amongst the beforementioned parties, in such shares as the jury by their verdict shall find and direct: Provided, that it shall be sufficient, if the defendant is advised to pay money into Court, that he pay it as a compensation in one sum to all persons entitled under this Chapter for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury, and if the said sum be not accepted and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue: Provided also, that not more than one action shall lie for and in respect of the same subject matter of complaint; and that every such action shall be commenced within twelve calendar months after the death of such deceased person.

5. In every such action brought by and in the name of the executor or administrator of the person deceased, the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the person or persons for whom and on whose behalf such action shall be brought; and in all actions brought under the provisions of this Chapter the plaintiff on the record shall be required, together with the declaration, to deliver to the defendant or his attorney a full particular of the nature of the claim in respect of which damages shall be sought to be recovered.

6. The following words and expressions are intended to have the meanings hereby assigned to them respectively, so far as such meanings are not excluded by the context or by the nature of the subject matter, that is to say: the word "parent" shall include father and mother, and grandfather and grandmother, and stepfather and stepmother; and the word "child" shall include son and daughter, and grandson and granddaughter, and stepson and stepdaughter.

CHAPTER 214

Of Notice of and Enquiry into Accidents Occurring in Certain Employments and Industries.

SECTION

- 1.—Notice to be given by employer to Magistrate of accidents occurring in certain employments.
- 2.—Employments named in schedule; Application of Chapter to other employments; Sealfishery; Minister of Justice may make orders, which shall be published.
- 3.—Investigation to be held into causes of accident; Appointment of assessor; As-

SECTION

- essor to be a court; Powers of court; Expenses of witnesses; Report; Costs; Proceedings upon contempt.
- 4.—Application of Chapter to departments of the Government.
- 5.—Application of other Acts respecting accidents.
Schedule.

1. (1) Where there occurs in any employment to which this section applies any accident which causes to any person employed therein either loss of life or such bodily injury as to prevent him on any of the three working days next after the occurrence of the accident from being employed for five hours on his ordinary work, his employer shall as soon as possible and, in case of an accident not resulting in death, not later than six days after the occurrence of the accident, send to the nearest Stipendiary Magistrate (who shall report the same to the Minister of Justice) notice in writing of the accident, specifying the time and place of its occurrence, its probable cause, the name and residence of any person killed or injured, the work on which such person was employed at the time of the accident, and in case of an injury the nature of the injury.

(2) If any person makes default in complying with the requirements of this section he shall be liable on summary conviction to a fine not exceeding ten dollars.

(3) For the purpose of this section, the expression "working day" shall mean a day on which the person injured would, but for the injury, be employed in his ordinary work.

2. (1) Section one of this Chapter shall apply to the employments specified in the schedule to this Chapter.

(2) If the Minister of Justice is of opinion that any other employ-

ment in which twenty persons or more, not being domestic servants, are employed by the same employer, is specially dangerous to life or limb, the Minister of Justice may by order direct that section one of this Chapter shall apply to that employment, and thereupon while the order is in force that section shall apply accordingly.

Provided that should section one of this Chapter be ordered to apply to the seal fishery, it shall be the duty of the master of any sealing steamer of which an accident shall have happened to a member of the crew, within six days after the arrival of such steamer in any port of this Colony, to give notice of such accident in the manner and form in the said section provided and subject to the provisions of said section.

- (3) The Minister of Justice may by order revoke or modify any order made under the foregoing powers, and modify or limit the application of section one of this Chapter to the employment specified in the schedule to this Chapter.
- (4) The Minister of Justice may also by order require any further particulars to be specified in the notice to be sent in pursuance to section one of this Chapter.
- (5) Every order made under this section shall be notified in the *Royal Gazette*, and in such other manner as may appear to the Minister of Justice sufficient for giving publicity thereto, and shall be laid before both Houses of the Legislature as soon as may be after it is made.

3. Where it appears to the Minister of Justice that any accident involving loss of life or bodily injury is of sufficient importance to require a formal investigation of the accident and of its causes and circumstances, the Minister of Justice may by order direct such investigation to be held, and with respect to any such investigation the following provisions shall have effect:—

- (1) The Minister of Justice may appoint a competent person to hold the investigation, and may appoint any person possessing legal, medical or special knowledge to act as assessor in holding the investigation, and assign to such persons such remuneration as the Minister of Justice may determine.
- (2) The person appointed to hold the investigation (hereinafter

called the Court) shall hold the same in open Court in such manner and under such conditions as the Court may think most effectual for ascertaining the causes and circumstances of the accident, and enabling the Court to make the report in this section mentioned.

- (3) The Court shall have for the purpose of the investigation all the powers of a Court of summary jurisdiction when acting as a Court in the exercise of its ordinary jurisdiction, and in addition the following powers, namely:—
 - (a) Power to enter and inspect, or to authorize any person to enter and inspect, any place or building, the entry or inspection whereof appears to the Court requisite for the said purpose;
 - (b) Power, by summons signed by the Court, to require the attendance of all such persons as it thinks fit to call before it and examine for the said purpose, and for that purpose to require answers or returns to such enquiries as it thinks fit to make;
 - (c) Power to require the production of all books, papers and documents, which it considers important for the said purpose;
 - (d) Power to administer an oath and to require any person examined to sign a declaration of the truth of the statements made by him in his examination.
- (4) Every person attending as a witness before the Court and not being the employer of the person killed or injured, or in the employment of that employer, shall be allowed such expenses as would be allowed to a witness attending before a Court of record, and in case of dispute as to the amount to be allowed, the same shall be referred by the Court to a master of the Supreme Court, who on request signed by the Court shall ascertain and certify the proper amount of the expenses.
- (5) The Court holding an investigation under this section shall make a report to the Minister of Justice stating the causes of the accident and its circumstances, and adding any observations which the Court thinks it right to make, and the Minister of

Justice may cause any such report to be made public in such manner as the Minister of Justice thinks fit.

(6) The Court may order any costs and expenses incurred in and about an investigation under this section (including any remuneration payable to any person appointed to hold the investigation or to act as assessor) to be paid by any person summoned before it, if it finds that the accident was due to the act or default or negligence of that person; and any such order shall, on the application of any person entitled to the benefit thereof, be enforced by any Court of summary jurisdiction as if the costs and expenses were a penalty imposed by the Court.

(7) If any person without reasonable excuse (proof whereof shall lie on him) either fails, after having had the expenses, if any, to which he is entitled, to comply with any summons or requisition of a Court holding an investigation under this section, or prevents or impedes the Court in the execution of its duty, he shall for every such offence be liable on summary conviction to a fine not exceeding fifty dollars, and in case of a failure to comply with a requisition for making any return or producing any document shall be liable, on summary conviction, to a fine not exceeding fifty dollars for every day that such failure continues.

4. This Chapter shall apply in the case of accidents occurring to persons employed by a department of the Government, and in such cases the notice to be given by an employer shall be given by the person in charge of the work.

5. The provisions of this Chapter are in addition to the provisions of any Chapter of these Consolidated Statutes respecting railways, whereby investigations or inquiries into accidents may be authorized or ordered.

SCHEDULE.

1. Construction, use, working or repair of any railway, tramway, gasworks, electric works, canal, bridge, tunnel, harbor, dock, port, pier, quay, lumber or pulp mill, factory or mine, or other work whether authorized by any Act of the Legislature or not.

2. Construction or repair by means of a scaffolding of any building which exceeds thirty feet in height, or use or working of any such build-

ing in which more than twenty persons, not being domestic servants, are employed for wages.

3. Use or working of any traction or other engine worked in the open air.

CHAPTER 215.

Of the Liens of Mechanics and Others.

SECTION

- 1.—Short Title.
- 2.—Construction.
- 3.—Agreement shall not deprive a person of lien.
- 4.—Mechanic to have lien for work and materials.
- 5.—How lien shall attach.
- 6.—Mechanic, &c., also to have lien for wages.
- 7.—Owner may retain for thirty days ten per cent.
- 8.—Lien by sub-contractors.
- 9.—Payments made in good faith shall discharge lien.

SECTION

- 10.—Lien not to make owner liable for more than is payable to him.
- 11.—Persons furnishing materials to have a lien upon giving notice.
- 12.—Arbitration.
- 13.—Payment to operate as a discharge.
- 14.—Mode of arbitration.
- 15.—Property not to be removed during continuance of lien.
- 16.—Registration of claim of lien.
- 17.—A claim for wages may include claims of any number.
- 18.—Mode of registration.
- 19.—Person entitled to lien shall be deemed a purchaser.

1. This Chapter may be cited as “The Mechanics’ Lien Act.”

2. Where the following words occur in this Chapter, or in the schedule thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:—

- (1) “Contractor” shall mean a person contracting with, or employed directly by the owner for the doing of work, or placing, or furnishing of, machinery or materials for any of the purposes mentioned in this Chapter.
- (2) “Sub-contractor” shall mean a person not contracting with, or employed directly by the owner for the purposes aforesaid, but contracting with or employed by the “contractor,” or under him by another “sub-contractor.”
- (3) “Owner” shall extend to and include a person having any estate

or interest in the land upon or in respect of which the work is done, or materials or machinery are placed or furnished, at whose request and upon whose credit, or on whose behalf, or with whose consent in writing, or for whose direct benefit any such work is done, or materials or machinery placed or furnished, and all persons claiming under him whose rights are acquired after the work in respect of which the lien is claimed is commenced, or the materials or machinery furnished have been commenced to be furnished.

3. No agreement shall be held to deprive anyone otherwise entitled to a lien under this Chapter, and not a party to the agreement, of the benefit of the lien, but the lien shall attach notwithstanding such agreement.

4. Unless he signs an express agreement to the contrary, every mechanic, machinist, builder, miner, laborer, contractor, or other person doing work upon or furnishing materials to be used in the construction, alteration, or repair of any building or erection, or erecting, furnishing or placing machinery of any kind in, upon, or in connection with any building, erection, or railway, or mine, shall, by virtue of being so employed or furnishing, have a lien for the price of the work, machinery or materials upon the building, erection, or railway, or mine, and the lands occupied thereby or enjoyed therewith, limited in amount to the sum justly due to the person entitled to the lien.

5. (1) The lien shall attach upon the estate and interest of the owner as defined by this Chapter, in the building, erection, railway, or mine, upon or in respect of which the work is done, or the materials or machinery placed or furnished; and the land occupied thereby or enjoyed therewith.
- (2) In cases where the estate or interest charged by the lien is leasehold, the fee-simple may also, with the consent of the owner thereof, be subject to said charge; provided such consent is testified by the signature of such owner upon the claim of lien at the time of the registering thereof and duly verified.
- (3) In case the land, upon or in respect of which any work as aforesaid is executed, or labor performed, or upon which materials or machinery are placed, is encumbered by a prior mortgage or other charge, existing or created before the commencement of the work, or of the placing of the materials or machinery upon the land, such mortgage or other charge shall not bear priority over the lien to any greater extent than the sum by which the selling value of the land, with such work, material, or machinery thereon, exceeds the sum by which such selling value thereof has been actually increased by the improvement caused by such work, materials, or machinery being placed thereon; provided that the mortgagee or holder of such charge consents to such lien charging the land, and testifies his consent thereto by executing the contract in respect of which the lien is claimed;

and, in case such consent is not given, no such mortgage or other charge shall be affected by any subsequently acquired lien.

6. (1) Without prejudice to any lien which he may have under the preceding sections, every mechanic, laborer, or other person who performs labor for wages upon the construction, alteration, or repairs of any building or erection, or in erecting or placing machinery of any kind in, upon, or in connection with any building, erection, railway, or mine, shall, to the extent of the interest of the owner, have upon the building, erection, or mine, and the land occupied thereby or enjoyed therewith, a lien for such wages not exceeding the wages of twelve days, or a balance equal to his wages for twelve days, and, upon a railway or mine, thirty days.

(2) The lien for wages given by this section shall attach (when the labor is in respect of a building, erection, railway, or mine on property belonging to the wife of the person at whose instance the work is done) upon the estate or interest of the wife in such property.

7. In all cases the owner shall, in the absence of a stipulation to the contrary, be entitled to retain for a period of thirty days after the completion of the contract ten per centum of the price to be paid to the contractor.

8. In case the lien is claimed by a sub-contractor, the amount which may be claimed in respect thereof shall be limited to the amount payable to the contractor or sub-contractor, (as the case may be) for whom the work has been done, or the materials or machinery have been furnished or placed.

9. (1) All payments up to ninety per centum of the price to be paid for the work, machinery or materials, as defined by section four of this Chapter, made in good faith by the owner to the contractor, or by the contractor to the sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing by the person claiming the lien has been given to such owner, contractor, or sub-contractor, (as the case may be), of the claim of such person, shall operate as a discharge *pro tanto* of the lien created by

this Chapter; but this section shall not apply to any payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this Chapter.

(2) A lien shall, in addition to all other rights or remedies given by this Chapter, also operate as a charge to the extent of ten per centum of the price to be paid by the owner for the work, machinery, or materials, as defined by section four of this Chapter, up to thirty days after the completion of the work or the delivery of the materials in respect of which such lien exists, and no longer, unless notice in writing be given, as herein provided.

(3) A lien for wages for twelve days, or thirty days, (as the case may be), or for a balance equal to the wages for such time, shall, to the extent of the said ten per centum of the price to be paid to the contractor, have priority over all other liens under this Chapter, and over any claim by the owner against the contractor for or in consequence of the failure of the latter to complete his contract.

10. Save as herein provided the lien shall not attach so as to make the owner liable to a greater sum than the sum payable by the owner to the contractor.

11. All persons furnishing material to or doing labor for the person having a lien under this Chapter, in respect of the subject of such lien, who notify the owner of the premises sought to be affected thereby within thirty days after such material is furnished or labor performed, of an unpaid account or demand against such lien-holder for such material or labor, shall be entitled, subject to the provisions of sections six and nine, to a charge therefor *pro rata* upon any amount payable by such owner under said lien; and if the owner thereupon pays the amount of such charge to the person furnishing material and doing labor as aforesaid, such payment shall be deemed a satisfaction *pro tanto* of such lien.

12. In case of a dispute as to the validity or amount of an unpaid account or demand, of which notice is given to the owner under the preceding section, the same shall be first determined by action in the proper Court in that behalf, or by arbitration in manner mentioned in section fourteen, at the option of the person having the unpaid account or demand against the lien-holder; and, pending the proceedings to determine the dispute, so much of the amount of the lien as is in question therein may be withheld from the person claiming the lien.

13. In case the person primarily liable to the person giving such notice as mentioned in section eleven, fails to pay the amount awarded within ten days after the award is made, the owner, contractor, or sub-contractor may pay the same out of any moneys due by him to the person primarily liable as aforesaid, on account of the work done, or materials or machinery furnished or placed, in respect of which the debt arose; and such payment, if made after an award (or if made without any arbitration having been previously had, or dispute existing, then if the debt in fact existed and to the extent thereof), shall operate as a discharge *pro tanto* of the moneys so due, as aforesaid, to the person primarily liable.

14. (1) In case a claim is made by a sub-contractor in respect of a lien to which he is entitled, and a dispute arises as to the amount due or payable in respect thereof, the same shall be settled by arbitration.

(2) One arbitrator shall be appointed by the person making the claim, one by the person by whom he was employed, and a third arbitrator shall be appointed by the two so chosen.

(3) The decision of the arbitrators, or a majority of them, shall be final and conclusive.

(4) In case either of the parties interested in any such dispute refuses or neglects, within three days after notice in writing requiring him to do so, to appoint an arbitrator, or if the arbitrators appointed fail to agree upon a third, the appointment may be made by the Supreme Court or a Judge thereof.

15. During the continuance of a lien no portion of the property or machinery affected thereby shall be removed to the prejudice of the lien; and any attempt at such removal may be restrained by application to the Supreme Court or a Judge thereof.

16. (1) A claim of lien applicable to the case may be registered in the office of the Registrar of Deeds, and shall set forth:—

(a) The name and residence of the claimant, and of the owner of the property to be charged, and of the person for whom and upon whose credit the work is done, or materials or machinery furnished and the time or period within which the same was or was to be done or furnished.

(b) The work done, or materials or machinery furnished.

- (c) The sum claimed as due, or to become due.
 - (d) The description of the land to be charged.
 - (e) The date of expiry of the period of credit agreed to by the lien-holder for payment for his work, material or machinery, where credit has been given.
- (2) The claim may be in one of the forms given in the schedule to this Chapter, and shall be verified by the affidavit of the claimant, or of his agent or assignee, having full knowledge of the matters required to be verified, and the affidavit of an agent or assignee shall state that he has such knowledge.

17. A claim for wages may include the claims of any number of mechanics, labourers, or other persons aforesaid who may chose to unite therein. In such case each claimant shall verify his claim by his affidavit, but need not repeat the facts set out in the claim; and an affidavit substantially in accordance with form 4 in the schedule to this Chapter, shall be sufficient.

- 18.** (1) The Registrar, upon payment of his fee, shall register the claim, so that the same may appear as an encumbrance against the land therein described.
- (2) The fee for registration shall be ten cents a folio of ninety words; if several persons join in one claim, the Registrar shall have a further fee of twenty-five cents for every person after the first.
- (3) The Registrar shall copy in a registry book, to be called the "Mechanics' Lien Registry Book," any claim or affidavit, and he shall number each claim, and shall insert the same in the alphabetical indexes, with the like particulars as in other cases; and he may describe the nature of the instrument as "Mechanics' Lien."

19. Where a claim is so registered, the person entitled to a lien shall be deemed a purchaser *pro tanto*, and within the provisions of "The Registration of Deeds Act"; but except as herein otherwise provided, "The Registration of Deeds Act" shall not apply to any lien arising under this Chapter.

20. (1) Where the lien is for wages under sections six or nine, the claim may be registered,—

(a) At any time within thirty days after the last day's labor for which the wages are payable, or

(b) At any time within thirty days after the completion of the construction, alteration, or repair of the building or erection, or after the erecting or placing of the machinery in or towards which respectively the labor was performed and the wages earned, but so that the whole period shall not exceed sixty days from the last day's labor aforesaid.

(2) Such lien shall not be entitled to the benefit of the provisions of sections six and nine, after the said respective periods, unless the same is duly registered before the expiration of the said periods so limited.

(3) Such lien shall have the same priority for all purposes after as before registration.

21. In other cases the claim of lien may be registered before or during the progress of the work, or within thirty days from the completion thereof, or from the supplying materials or placing the machinery.

22. Every lien which has not been duly registered under the provisions of this Chapter shall absolutely cease to exist on the expiration of the time hereinafter limited for the registration thereof, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Chapter, and a certificate thereof (which may be granted by the Court or Judge in which or before whom proceedings are instituted) is duly registered in the office of the Registry of Deeds.

23. Every lien which has not been duly registered under the provisions of this Chapter shall absolutely cease to exist after the expiration of ninety days after the work has been completed, or materials or machinery furnished, or wages earned, or the expiry of the period of credit, where such period is mentioned in the claim of lien filed, unless in the meantime proceedings are instituted to realize the claim under the provisions of this Chapter, and a certificate thereof (which may be granted by the Court or Judge in which or before whom proceedings are instituted) is duly registered as aforesaid.

24. If there is no period of credit, or if the date of expiry of the

period of credit is not stated in the claim so filed, the lien shall cease to exist upon the expiration of ninety days after the work has been completed, or materials or machinery furnished, unless in the meantime proceedings shall have been instituted pursuant to section twenty-three of this Chapter.

25. In the event of the death of a lien-holder, his right of lien shall pass to his personal representatives, and the right of a lien-holder may be assigned by any instrument in writing.

26. A lien may be discharged by a receipt signed by the claimant, or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and filed; such receipts shall be numbered and entered by the Registrar by a memorandum on the margin of the registry of the lien, and indexed. The fee for registering shall be twenty-five cents.

27. Where there is a contract for the execution of the work, as hereinbefore mentioned, the registration of all discharges of liens shall be at the cost of the contractor, unless a Court or Judge shall otherwise order.

28. (1) Where the amount of the claims in respect of any lien is within the jurisdiction of the District Courts, proceedings to recover the same, according to the usual procedure of the said Courts, by judgment and execution, may be taken in the said Courts in the jurisdiction of which the land charged is situate; and the District Court Judge, where the amount of the lien is within his jurisdiction, may order a summons to issue and cite the parties before him, and may order the accounts to be taken, and all necessary enquiries to be made; and in default of payment may direct the sale of the estate and interest charged, and such further proceedings may be taken as the Judge directs.

(2) Any conveyance under the signature of the District Court Judge shall be effectual to pass the estate or interest sold.

(3) The fees and costs in all proceedings taken under this section shall be such as are payable in respect of the like or similar matters, according to the ordinary procedure of the Courts.

29. In cases other than those specified in the preceding section, the lien may be realised in the Supreme Court, and may be heard at any sitting of the said Court.

- 30.** (1) Any number of lien-holders may join in one action, and any action brought by a lien-holder shall be taken to be brought on behalf of all the lien-holders of the same class, who shall have registered their liens before or within thirty days after the commencement of the action, or who shall within the said thirty days file in the proper office of the Court from which the writ issued a statement entitled in or referring to the said action of their respective claims.
- (2) In the event of the death of the plaintiff, or his refusal or neglect to proceed, any other lien-holder of the same class, who has registered his lien or filed his claim in the manner and within the time above limited for that purpose, may be allowed to prosecute the action on such terms as may be deemed just and reasonable.
- (3) In case of a sale of the estate and interest charged with the lien, the Court or Judge may direct the sale to take place at any time after one month from the recovery of judgment, and it shall not be necessary to delay the sale for a longer period than is requisite to give reasonable notice thereof.
- (4) The said Court or Judge may also direct the sale of any machinery, and authorize its removal.
- (5) Where judgment is given in favor of a lien, the Court or Judge may add to the judgment the costs of and incidental to registering the lien, as well as the costs of the action.
- (6) Where there are several liens under this Chapter against the same property, each class of the lien-holders shall, subject to the provisions of sections five, nine and eleven, rank *pari passu* for their several amounts, and the proceeds at any sale shall, subject as aforesaid, be distributed amongst them *pro rata*, according to their several classes and rights, and they shall respectively be entitled to execution for any balance due to them respectively after said distribution.
- (7) Upon application to the District Courts in claims under fifty dollars, and to the Supreme Court in other cases, a Court or Judge may receive security or payment into Court, in lieu of the amount of the claim and may thereupon vacate the registry of the lien.
- (8) The Court or Judge may annul the said registry upon any other ground.

(9) In any of the cases mentioned in sub-sections seven and eight, the Court or Judge may proceed to hear and determine the matter of the said lien, and make such order as seems just; and in case the person claiming to be entitled to such lien has wrongfully refused to sign a discharge thereof, or without just cause claims a larger sum than is found by such Court or Judge to be due, the Court or Judge may order and adjudge him to pay costs to the other party.

31. (1) Every mechanic, or other person, who has bestowed money, or skill and materials, upon any chattel or thing in the alteration or improvement of its properties, or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed, shall, while such lien exists, (the lien under this section shall be construed to have effect so long as the said chattel or thing shall remain in the possession or under the control of such mechanic or other person), but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right, in addition to all other remedies provided by law, to sell the chattel or thing in respect of which the lien exists, on giving one week's notice by advertisement in a newspaper published in the district in which the work was done; or in case there is no newspaper published in such district, then in the newspaper published nearest thereto, stating the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer or person employed to sell the same, and leaving a like notice in writing at the place or last known place of residence (if any) of the owner.

(2) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him, and the costs of advertising and sale, and shall, upon application, pay over any surplus to the person entitled thereto.

SCHEDULE.

FORM 1.—CLAIM OF LIEN.

A. B., (*name of claimant*) of (*here state residence of claimant*), (*if so, as assignee of, stating name and residence of assignor*), under the "Me-

chanics' Lien Act," claims a lien upon the estate of (*here state the name and residence of owner of the land upon which the lien is claimed*) in the undermentioned land, in respect of the following work (*or material*) that is to say, (*here give a short description of the nature of the work done, or materials furnished, and for which the lien is claimed*), which work was (*or is to be*) done (*or materials were furnished*) for (*here state the name and residence of the person upon whose credit the work is done or materials furnished*) on or before the day of

The amount claimed as due (*or to become due*) is the sum of \$.....

The following is the description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*):—

When credit has been given insert:—The said work was done (*or materials furnished*) on credit, and the period of credit agreed to expired (*or will expire*) on the day, 19....

Dated at, this day of, A.D. 19...

(*Signature of Claimant.*)

FORM 2.—CLAIM OF LIEN FOR WAGES.

A. B., (*name of claimant*) of (*here state residence of claimant*) (*if so, as assignee of, stating name and residence of assignor*) under the "Mechanics' Lien Act," claims a lien upon the estate of (*here state the name and residence of the owner of land upon which the lien is claimed*), in the undermentioned land, in respect of days' work performed thereon while in the employment of (*here state the name and residence of the person upon whose credit the work was done*), on or before the day of

The amount claimed as due is the sum of \$.....

The following is the description of land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated at, this day of, 19...

(*Signature of Claimant.*)

FORM 3.—CLAIM OF LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons, under the "Mechanics' Lien Act," claim a lien upon the estate of (*here state the name and residence of the owner of land*)

upon which the lien is claimed) in the undermentioned land, in respect of wages for labor performed thereon, while in the employment of (*here state name and residence, or names and residences of employers of the several persons claiming the lien*):—

A. B., of (*residence*), \$.forday's wages.

C. D., of " \$.forday's wages.

E. F., of " \$.forday's wages.

The following is a description of the land to be charged (*here set out a concise description of the land to be charged sufficient for the purpose of registration*).

Dated, this day of, 19...

(*Signatures of several Claimants.*)

FORM 4.—AFFIDAVIT VERIFYING CLAIM.

I, A. B., named in the above (*or annexed*) claim, make oath and say that the said claim is true, (*or, that the said claim, so far as it relates to me, is true*).

*Or, We, A. B. and C. D., named in the above (*or annexed*) claim, make oath and say, and each for himself saith that the claim, so far as it relates to him, is true.*

(*Where affidavit is made by agent or assignee a clause must be added to the following effects:—I have full knowledge of the facts set forth in the above (*or annexed*) claim.*)

Sworn, &c.

Or, The said A. B. and C. D. were severally sworn before me, &c.

CHAPTER 216.

Of the Employment of Men engaged in Logging.

SECTION

- 1.—Interpretation section.
- 2.—Appointment of Inspectors.
- 3.—Respecting termination of employment by logger.
- 4.—Respecting payment of wages.
- 5.—Respecting supply of wage tickets.
- 6.—Respecting statement of time.
- 7.—Respecting rooms in logging camps.
- 8.—Power and duties of Inspector.
- 9.—Respecting the schedule of food.
- 10.—Respecting bed-clothes.

SECTION

- 11.—Respecting axes.
- 12.—Respecting the construction of camps.
- 13.—Respecting the attendance of a physician.
- 14.—Board and lodging to be supplied Inspectors.
- 15.—Respecting the dismissal of Inspectors.
- 16.—Respecting reports by Inspectors.
- 17.—Penalty section.
- 18.—Respecting reports of breaches of Chapter.

1. In this Chapter "an employer shall be held to mean the individual who or company who engages or pays the workmen concerned. Loggers shall be held to mean men engaged in the physical work of cutting, hauling, driving, piling and handling of trees and their conveyance to a mill or factory, or to a shipping port, and cooks and helpers engaged in maintaining the camps and the logging operations in the woods.

2. The Minister of Agriculture and Mines shall appoint one or more Inspectors whose duty it shall be to see that the provisions of this Chapter are observed and enforced.

3. In the absence of any special agreement, no logger shall, during the logging season, terminate his contract of employment unless he shall give to his employer or his employer's agent at least one week's previous notice of his intention to do so. Any logger leaving his employment without giving such notice shall forfeit to his employer one week's wages.

4. The employer shall pay in cash or cheque to the logger the amount of wages due under his contract of employment, within twenty-four hours of the time when his time-slip and ticket as provided in section 5, is presented at the usual place of payment of such wages. If the employer shall fail to pay such wages on that day, he shall pay to such logger in addition to the wages so due, a sum of one dollar for every day during which such default shall continue, to be recovered as part of such wages in an action against the employer at the suit of such logger.

5. Within two weeks after loggers are engaged they shall each be

supplied with tickets, signed by or on behalf of the employer, stating the rate of wages to be paid.

6. Not less frequently than every alternate Tuesday, the employer or his agent shall give to each logger a written statement of the time during the previous two weeks up to and including the previous Saturday for which he is entitled to be paid.

7. Each logging camp shall contain a sleeping compartment and an eating compartment, and the sleeping compartment shall be comfortably heated, and the sleeping berths shall be fitted, subject to the approval of the Government Inspector.

8. The Government Inspector shall, in each year, prescribe the manner in which sleeping berths shall be fitted, as required by section 7, and shall notify employers thereof not later than the first day of July in each year, and publication of such notice in the *Royal Gazette* shall be conclusive evidence thereof.

9. After proper enquiry, a schedule of food to be supplied to loggers while engaged in logging operations shall be prepared by the Minister of Agriculture and Mines and published in the *Royal Gazette* not later than the first day of April in each year, and the food so prescribed shall be supplied by employers to the loggers working for them, under a penalty not exceeding five hundred dollars for each offence; provided that not more than one penalty shall be payable as penalty for breach of this section upon any one day in any one camp.

10. The employer shall, upon request of a logger, supply him with all necessary bed-clothes at actual cost and expense.

11. Employers shall supply loggers with axes and axe handles free of cost. If an axe be lost, the value thereof shall be deducted from the wages of the loser. A logger breaking more than one axe handle during a week shall pay the cost of handle or handles supplied to him in place thereof.

12. Logging camps erected hereafter shall be lined or ceiled with paper or board on the inside of the walls and roof, or covered with board and tarred felt on the outside, or otherwise maintained in a water-tight condition. The floors of camp shall be constructed of boards or logs flattened on three sides. It shall be the duty of the Inspector to report immediately to the Minister of Agriculture and Mines upon any unsuitable

camps inspected by him, and the said Minister shall call the matter to the attention of the person or company responsible, who shall forthwith cause the said camps to conform with this section.

13. Employers shall cause a physician to visit each logging camp at least once in each month, when loggers are occupying the same, except in case of employers with less than one hundred employees. No charge shall be made the loggers for medical services of the physician so supplied, unless a physician visits the camp each month, in which case forty cents per month shall be paid as a physician's fee by each logger.

14. Board and lodgings in the camp shall be afforded by the employers to the Government Inspectors, when such accommodation is requested, the same to be paid for by the parties accommodated; provided any person so accommodated shall in all respects conform to and observe the rules and discipline for the time being in force in such camp.

15. Upon complaint of neglect of duty, signed by not less than fifty loggers, Inspectors complained of shall be dismissed by the Minister of Agriculture and Mines, unless the Minister, after enquiry, is satisfied that the complaint is unfounded. No complaint shall be acted upon until the signatures thereto have been proved by the affidavit of some credible witness.

16. Once each month Inspectors shall report in writing to the Minister of Agriculture and Mines upon the following:

- (1) The number of camps visited.
- (2) The condition of such camps.
- (3) The number of men occupying the same respectively, and wages paid them per month.
- (4) The quality of food supplied.
- (5) Particulars of all breaches of or complaints under this Chapter. and the action taken in connection therewith.
- (6) Any further information bearing upon camp life and its operation.

17. Except where otherwise provided herein, the penalty for a breach hereof shall, for each offence, be a fine not exceeding one hundred dollars, or in default of payment imprisonment for not more than three months. The fine shall be paid to the Minister of Finance for the use of the Colony.

18. Every breach of the provisions of this Chapter shall be reported in writing to the employer by the said Inspector, and in the event of the same not being remedied within ten days after the report thereof shall have been served on the employer, proceedings shall be instituted by and in the name of the said Inspector to recover the fines and penalties created by this Chapter in a summary manner before a Stipendiary Magistrate.

CHAPTER 217.

Of the Qualification of Engineers.

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- 1.—Appointment of Examiner and Assistant.
- 2.—Conduct of examinations.
- 3.—Examination fees.
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- 7.—Penalty for forging or altering certificate.
- 8.—The certificates—1st class and 2nd class.
- 9.—Penalty for sending steamer to sea without certificated engineer.
- 10.—Certificates of service.
- 11.—Act not to apply to steamers under 20 N.H.P.

1. The Governor in Council shall appoint an examiner, who shall by an engineer holding a first class engineer's certificate under the provisions of any Act of the Imperial Parliament relating to Merchant Shipping, and an assistant examiner who shall be the person, for the time being, holding the position of Boiler Inspector for Newfoundland. The said examiner and assistant shall conduct the examination of such persons as may apply for engineers' certificates of competency under this Chapter.

2. All such examinations shall be conducted in St. John's, and the Governor in Council shall make rules for the conduct of the same, and as to the qualification of applicants, as nearly as may be in accordance with the regulations of the Board of Trade in the United Kingdom.

3. All applicants for examination shall, previous to the examination, pay to the Colonial Secretary a fee of ten dollars in the case of examination for a first class engineer's certificate, and a fee of seven dollars and fifty cents in the case of examination for a second class engineer's certificate.

4. The Governor in Council shall deliver to every applicant, who is duly reported by such examiner to have passed the examination satisfactorily and to have given satisfactory evidence of his sobriety, experience, ability and general good conduct on board ship, a certificate to the effect that he is competent to act as first-class or second-class engineer of a sea-going ship registered in Newfoundland, as the case may be: Provided that in every case in which the Governor in Council has reason to believe such report to have been unduly made, he may require a re-examination of the applicant, or a further enquiry into his testimonials and character, before granting him a certificate; and provided that certificates

of competency granted contrary to the provisions of this Chapter, or upon any false, incorrect, or insufficient proof, certificate or report of service, qualification, conduct or character, shall be regarded as improperly granted.

5. Whenever any engineer proves to the satisfaction of the Governor or in Council that he has, without fault on his part, lost or been deprived of any certificate already granted to him, the Governor in Council may, on payment of one-half the fee charged for the original certificate, cause a copy or duplicate to be made out and certified as aforesaid and to be delivered to him; and any copy which purports to be so made and certified as aforesaid, shall have all the effect of the original.

6. All certificates shall be made in duplicate, and one part shall be delivered to the person entitled and the other shall be kept and recorded in the office of the Colonial Secretary of this Colony, and all documents purporting to be certificates granted by the Governor in Council in pursuance of this Chapter shall be received in evidence and shall be deemed to be such certificates without further proof, unless the contrary be shown; and whenever notice of the cancelling, suspending, altering, or otherwise affecting by competent authority any such certificate, is received by the Governor in Council, there shall thereupon be made a corresponding entry in the record of certificates, and a copy or duplicate of any such certificate, purporting to be certified by the Colonial Secretary, shall be *prima facie* evidence as aforesaid of any entry made as aforesaid, and in respect of any such certificate shall be *prima facie* evidence of the truth of the matter in such entry.

7. Every person who makes or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or any other person a certificate, or who forges, assists in forging, or procures to be forged, or fraudulently alters, or assists in fraudulently altering, or procures to be fraudulently altered, any such certificate; or who fraudulently makes use of any such certificate which is forged, altered, cancelled or suspended, or to which he is not justly entitled, or who fraudulently lends his certificate to or allows the same to be used by any other person, shall be guilty of a misdemeanour.

8. Certificates of competency shall be of two kinds, viz.: first class engineer's certificate and second class engineer's certificate. Every sea-going steamship of one hundred nominal horse power or upwards shall be provided with at least two engineers, one of whom shall be a first class,

and the other a first class or second class engineer, duly certificated, and every sea-going steamship of less than one hundred nominal horse power, with at least one engineer, who is a first class or second class engineer duly certificated.

9. No steamships registered in Newfoundland shall go to sea from any port in or of Newfoundland or its Dependencies, unless the engineers thereof have obtained and possess valid certificates for sea-going ships, appropriate to their several stations in such ships, or of a higher grade, from the Board of Trade in the United Kingdom, or valid certificates of competency appropriate to their several stations in such ships, or of a higher grade granted in any British possession and declared by Order of His Majesty in Council, published in the *London Gazette* under the provisions of the Merchant Shipping Act 1894, or of any Act of the Parliament of the United Kingdom containing such provisions, to be of the same force as certificates of competency for foreign going ships granted under the Acts of the Parliament of the United Kingdom relating to Merchant Shipping, or certificates of competency under the provisions of this Chapter. And every person who, having been engaged to serve as engineer of any sea-going ship registered in Newfoundland, goes to sea as aforesaid as such engineer without being at the time entitled to and possessed of such certificate for sea-going ships, as hereinbefore required, or who employs any person as engineer of any sea-going ship, as aforesaid, without first ascertaining that he at the time is entitled to and possessed of such certificate, shall for such offence incur a penalty not exceeding one hundred dollars.

10. Every person who has, for a period of two years immediately preceding the tenth day of May, 1906, been employed as a chief or second engineer on board a sea-going steamship, and who has satisfied the examiner both as to such service and as to character and conduct, shall be entitled to a first or second class certificate of service, as the case may be, and any such certificate shall be as good and valid, in respect only of steamships registered in Newfoundland, as a certificate of competency of a like grade granted under the provisions of this Chapter.

11. The provisions of this Chapter shall not apply to any steamship or steam launch under twenty nominal horse power.

CHAPTER 218.

Of the Qualification of Firemen.

SECTION

- 1.—Firemen to be licensed.
- 2.—Boiler Inspector to be examiner.
- 3.—Governor in Council shall make rules.
- 4.—Respecting first class licenses.

SECTION

- 5.—Respecting second class licenses.
- 6.—Penalty.
- 7.—Certain firemen to receive licenses free.

1. No person shall be employed as a fireman or stoker on any steamship registered in this Colony or in connection with any boiler or engine in any mill, mine, factory or workshop in this Colony unless he is the holder of a license under the provisions of this Chapter, nor shall any person who is not the holder of a license as aforesaid be employed as an engineer on board any steamship or steam launch under twenty nominal horse power or be in charge of any engine in any factory or workshop in this Colony.

2. The Boiler Inspector for Newfoundland is hereby appointed an examiner to conduct examinations of such persons as shall apply for licenses under this Chapter and shall hold the said examination at such places and times as shall be prescribed in the regulations hereinafter mentioned.

3. The Governor in Council shall make rules and regulations respecting the holding of such examinations, and shall prescribe the subjects in which applicants for licenses of the first and second class respectively shall be examined.

4. Licenses shall be of two kinds, first class licenses and second class licenses, and may be granted by the said Boiler Inspector free of charge to such persons as shall have passed the necessary examination to his satisfaction. Licenses shall be in force for one year from the date of issue, but may be annually renewed.

5. A second class license shall entitle the holder thereof to act as fireman on any steamer registered in this Colony and in connection with any boiler in any mill, mine, factory or workshop, and, in addition to the

foregoing, a first class license shall entitle the holder thereof to act as engineer on any steamer or steam launch under twenty nominal horse power, and to take charge of any steam engine in any mill, mine, factory or workshop in the Colony.

6. Any person who shall be employed in contravention of the first section of this Chapter, and the employer of any such person, shall be severally liable to a penalty of fifty dollars, to be recovered in a summary manner upon the complaint of any person before a Justice of the Peace.

7. All persons who have been before the 22nd day of March 1910, employed as engineers or firemen shall have the right to receive the licenses free of charge, whether first class or second class, to which in the opinion of the said Boiler Inspector their service shall entitle them, without being subject to any examination.

CHAPTER 219.

Of Trade Unions.

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- 2.—Interpretation.
- 3.—Purposes of Trade Union not unlawful.
- 4.—Purposes not to render agreements void.
- 5.—Respectin the recovery of damages for breach of certain agreements.
- 6.—Companies' Acts not to apply to Trade Unions.
- 7.—Registration of Trade Unions.
- 8.—Vesting of real and personal estate.
- 9.—Description of property in actions.
- 10.—Actions may be in name of authorized officer.

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- 11.—Penalties for certain offences by officers of Trade Unions.
- 12.—The Registrar.
- 13.—Respecting registration.
- 14.—Respecting the rules of Trade Unions.
- 15.—Registered office.
- 16.—Change of name.
- 17.—Amalgamation.
- 18.—Registration of notices.
- 19.—Dissolution of Trade Unions.
- 20.—Application of Imperial Acts.

1. The short title of this Chapter shall be "The Trade Union Act."

2. The term Trade Union means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if this Chapter had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

Provided that this Chapter shall not affect—

- (1) Any agreement between partners as to their own business;
- (2) Any agreement between an employer and those employed by him as to such employment;
- (3) Any agreement in consideration of the sale of the goodwill of a business, or of instruction in any profession, trade or handicraft.

The term "Secretary" shall include any officer of a trade union acting in the capacity of secretary, or any other person so acting, whether an officer of the union or not.

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render

any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

4. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

5. Nothing in this Chapter shall enable any Court to entertain any legal proceedings instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely:

- (1) Any agreement between the members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ or be employed.
- (2) Any agreement for the payment by any person of any subscription or penalty to a trade union.
- (3) Any agreement for the application of the funds of a trade union—
 - (a) To provide benefits to members; or
 - (b) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union; or
 - (c) To discharge any fine imposed upon any person by sentence of a Court of Justice; or
- (4) Any agreement made between one trade union and another; or
- (5) Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

6. The provisions of "The Companies' Act," and the Acts in amendment thereof, shall not apply to any trade union and the registration of any trade union under said Acts shall be void.

7. Any seven or more members of a trade union may, by subscribing their names to the rules of the union, or otherwise complying with the provisions of this Chapter with respect to registry, register such trade

union under this Chapter, provided that if any one of the purposes of such trade union be unlawful, such registration shall be void.

8. All real and personal estate whatsoever belonging to any trade union registered under this Chapter, shall be vested in the trade union registered under this Chapter, for the use and benefit of such trade union, and the members thereof, and be under the control of such trade union subject to the by-laws and rules of such trade union or any amendments thereof made and adopted in relation to or connected with such real and personal estate.

9. In all actions or suits or indictments or summary proceedings before any Court of summary jurisdiction, touching or concerning such property the same shall be stated to be the property of such trade union without further description.

10. The President and Secretary of any trade union registered under this Chapter, or any other officer of such trade union, who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution or complaint in any Court touching or concerning the property, right or claim to property of the trade union. In all cases concerning the real or personal property of such trade union, the President and Secretary shall and may sue or be sued, plead and be impleaded, in any Court, in their proper names, without other description than the title of their office.

11. If any officer, member or other person being or representing himself to be a member of a trade union registered under this Chapter, or the nominee, executor, administrator or assignee of a member thereof, or any person whatsoever, shall by false representation or imposition, obtain possession of any moneys, securities, books, papers or other effects of such trade union, or having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such union, or any part thereof, he shall upon a complaint made by any person on behalf of such trade union, or by the Registrar, be liable, on summary conviction, to a penalty not exceeding fifty dollars and costs, and to be ordered to deliver up all such property, or to repay all moneys applied improperly, and in default of such delivery or repayment, or of the payment of such penalty and costs aforesaid, to be imprisoned, with or without hard labor, for any period not exceeding three months; but nothing herein contained shall prevent any such person from being proceeded against by way of in-

dictment, if not previously convicted of the same offence under the provisions of this Chapter.

12. The Registrar of Companies shall be the Registrar under this Chapter.

13. With respect to the registry under this Chapter of a trade union, and the rules thereof, the following provisions shall have effect:

- (1) An application to register the trade union, and copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar.
- (2) The Registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Chapter, shall register such trade union and such rules.
- (3) No trade union shall be registered under a name identical with that which any other trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public.
- (4) The Registrar, upon registering such trade union, shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Chapter with respect to registry have been complied with.
- (5) The Governor in Council may from time to time make regulations respecting registry under this Chapter, and the forms to be used for such registry and the inspection of documents kept by the Registrar under this Chapter and respecting the fees to be paid on registry.

14. With respect to the rules of a trade union registered under this Chapter, the following provisions shall have effect:

- (1) The rules of every such trade union shall be binding upon its members.
- (2) A copy of the rules shall be delivered by the trade union to any person on demand, on payment of a reasonable sum to be fixed by the union.

15. Every trade union registered under this Chapter shall have a

registered office to which all communications and notices may be addressed. If any trade union under this Chapter is in operation for seven days without having such an office, such trade union and every officer thereof shall incur a penalty of twenty-five dollars for every day during which it is so in operation. Notice of the situation of such registered office or of any change therein shall be given to the Registrar and recorded by him; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Chapter.

16. A trade union may, with the approval of the Registrar in writing, change its name by the consent of not less than two-thirds of the total number of members.

17. Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions or either of them; but no amalgamation shall prejudice any right of a creditor of any union party thereto.

18. Notice in writing of every change of name or amalgamation, signed, in the case of a change of name, by seven members, and countersigned by the Secretary of the trade union changing its name, and in the case of an amalgamation, signed by seven members and countersigned by the Secretary of each and every union party thereto shall be given to the Registrar and recorded by him.

19. The rules of every trade union shall provide for the manner of dissolving the same.

20. The Imperial Act 38 and 39 Vic., cap. 86, entitled "The Conspiracy and Protection of Property Act, 1875," and the Act 6 Ed. VII., cap. 47, entitled "Trades Disputes Act, 1906," amending the same, both of which are incorporated into this Chapter as a Schedule hereto, are hereby declared to extend to and to be the law of this Colony as far as the same can be applied, and the provisions of the said "Trades Disputes Act, 1906," shall apply to all trade unions registered under this Chapter and to all trade disputes in this Colony.

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